CPG *Online Magazine*

Issue No. 5, 2016

German-Southeast Asian Center of Excellence
for Public Policy and Good Governance
CPG

Foreword

Dear Readers,

Welcome to the fifth 2016 issue of CPG's Online Magazine (COM)!

Over the months of July and August, CPG has once again organised a number of interesting events. These events included a seminar on international human rights law (in cooperation with *The Rights Practice*, UK) as well as three workshops on transnational organized crime (in cooperation with *Hans Seidel Foundation*), civil procedure law in Laos (in cooperation with *Hans Seidel Foundation* and the *Office of the Supreme People's Prosecutor*, Lao PDR), and on legal reform developments in China (in cooperation with *The Rights Practice*, UK).

In addition to the reports on these events this present issue features five articles and one comment regarding a variety of current legal and political issues and developments: prospects of constitutional politics in Thailand after the recent referendum on the constitutional draft (*Henning Glaser*), the South China Sea ruling by the PCA (*Sourabh Gupta*), the recent elections in Mongolia (*Anthony Rinna*), Nepal's quest for stability under a newly elected Prime Minister (*Kamal Dev Bhattarai*), and Thailand's migrant worker management policy (*Papawadee Tanodomdej*) as weall as the Brexit (*Cormac Mac Amhlaigh*).

For COM 5, 2016 we had the opportunity to conduct interviews with two ambassadors, the Deputy Director of Foreign Affairs and Transnational Crime Bureau of Thailand's Department of Special Investigation and the former Dean of the Faculty of Law at Thammasat University.

In the leisure section we are continuing our series on interesting roof top bars in Bangkok with the *Sky Bar* of *Lebua at State Tower Hotel*, where our upcoming annual conference will be held.

As usual, announcements on people, events and scholarship opportunities related to the scope of CPG's work and interest as well as information on job offers complete COM 5, 2016.

With many thanks to all who contributed to our activities over the past couple of months and to this issue, I wish you enjoyable reading!

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Faculty of Law, Thammasat University

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CPG EVENTS
July-August 2016

Workshop "Transnational Organized Cyber Crime – Challenges and Strategies"

8 July 2016, Windsor Suites Hotel Bangkok

On 8 July 2016, CPG in cooperation with Hanns Seidel Foundation (HSF) arranged the training workshop ***"Transnational Organized Cyber Crime – Challenges and Strategies"*** for investigation officers of the Department of Special Investigation at Windsor Suites Hotel Bangkok. Speaker of the workshop was Senior Superintendent ***Bernhard Egger***, Director of the Central Investigation Services Division at the Bavarian State Office of Criminal Investigation Bureau in Munich. He introduced to various growing challenges of organized cyber crime which investigation officers of involved law enforcement agencies are facing in the light of rapidly advancing technologies in field of internet and cyber space communication. Following the presentation during the morning session of the workshop, the DSI officers were provided the opportunity for questions and discussion in the afternoon session.

Workshop "Technical Capacity Building to Implement Laws Monitoring Civil Case Procedure"

18-19 July 2016, Pakse, Lao PDR

On 18 July 2016, CPG in cooperation Hanns Seidel Foundation and the Office of the Supreme People's Prosecutor (OSPP), Lao PDR, jointly hosted the training workshop ***"Technical Capacity Building to Implement Laws Monitoring Civil Case Procedure"*** for Laotian prosecutors in Pakse, Lao PDR. In the context of a major legal reform in Laos CPG Director ***Henning Glaser*** was invited to speak on the possible functions of a judicial agency, such as the OSPP, with respect to civil law reform, especially pertaining to areas inherently prone to public regulation.

Seminar "The United Nation Convention Against Torture in Asia – Recent Developments, Current Issues and Future Prospects"

26 August 2016, SD Avenue 2016

On 26 August 2016, CPG and The Rights Practice, United Kingdom, jointly hosted the seminar ***"The United Nation Convention Against Torture in Asia – Recent Developments, Current Issues and Future***

Prospects". The event provided a platform for exchange and discussion amomng experts and practitioners from involved international organizations and NGOs on the implementation of international and national laws pertaining to the protection against torture. Among the speakers of the seminar were ***Kingsley Abbot***, Senior International Legal Adviser for Southeast Asia, Asia Pacific Programme, International Commission of Jurists; ***Porpen Khongkaconkiet***, Director, Cross Cultural Foundation (CrCF); and ***Preeda Nakpiew***, legal officer at CrCF.

Workshop "Legal Reform in China – Developments, Achievements and Prospects"

29 August 2016, SD Avenue 2016

On 29 August 2016, CPG in cooperation with The Rights Practice, United Kingdom, arranged the workshop ***"Legal Reform in China – Developments Achievements, and Prosspects"***. Against the background of the ongoing process of legal reform in China since the 1980s the participants of the workshop discussed recent developments and achievements as well as future prospects of the reform efforts in China, with a focus of criminal law and criminal procedure law.

CPG Upcoming Event

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CPG Academy 2016 on Human Rights

5th – 12th October 2016

Faculty of Law, Thammasat University, Tha Phachan Campus

More information and application: www.cpg-online.de
E-mail: contact@cpg-online.de Tel: 02-613-2971

CPG's 7th Annual International Conference

"The Great Game Reloaded: Order and Disorder in Geopolitics and Global Governance"

12-14 October 2016

Lebua at State Tower Hotel, Bangkok

Organized by German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG)

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Speakers

H.E. Kasit Piromya, former Minister of Foreign Affiars of Thailand**; *Saori Katada*,** University of Southern California; ***Arie M. Kacowicz,*** Hebrew University of Jerusalem; ***Jona Razzaque,*** University of the West of England (UWE); ***Roland Dannreuther,*** University of Westminster; **Sabine Selchow,** London School of Economics and Political Science (LSE); ***Michael Lüders,*** Deutsch-Arabische Gesellschaft; ***Andrej Krickovic,*** National Research University, Moscow; ***Andrew Cooper,*** University of Waterloo; ***Fabio Tronchetti,*** School of Law of the Harbin Institute of Technology; ***Niels Petersen,*** University of Münster; ***Kjell Engelbrekt,*** Swedish Defence University, ***Hall Gardner***, American University of Paris

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ARTICLES

Thailand's Constitution Bill 2016 after the Referendum

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A. Introduction

By national referendum from August 7, 2016, the 20th constitution for Thailand has been adopted by the voters.[1] Being presently still under some adjustment it will soon be presented to the King of Thailand before it is enacted and promulgated as the new supreme law of the land upon royal command.[2] This article provides an overview of the coming constitutional order based on the Constitution Bill. It describes the main elements of the constitutional process in comparison with the former 2007 Constitution attempting to explore some patterns of identity, continuity and change and takes some of the prospective effects of the actual constitutional arrangements on the realities of constitutional politics into account. Like Thai constitutionalism in general the present Constitution Bill should all but be underestimated as a meaningful proposition of constitutional governance. It offers a comprehensive, technically well-conceived and determined formula of how to rule the country for the foreseeable future in the midst of a divisional crisis. Once more it proves the ability of Thai drafters to create a constitutional frame responding to the order of the day that will shape constitutional politics in Thailand with the best possible chance for continuity in troubled times.

The following text represents a preliminary assessment. Since neither the final bill has been presented nor the organic laws complementing it having being completed, only a rough overview is possible here.

B. Present and Prospective Status of Constitutional Rule in Thailand

Before the Constitution Bill itself is analyzed in more detail, it is helpful to clarify the present status of constitutional rule in Thailand and to differentiate some subsequent 'phases' and regimes of the constitutional process respectively as being based on the Interim Constitution and the new Constitution to come. In fact, after the referendum there are four essentially different yet closely interconnected constitutional regimes which might be referred to by 'the Constitution'. Three of them are contained in the Constitution Bill and one is the presently still valid Interim Constitution of 2014. The newly adopted 2016 Constitution Bill stipulates two different initial 'transitional' periods for the coming years which substantially deviate from the subsequent constitutional regime that is supposed to be permanent.[3] Notably, the four constitutional regimes that are effectively established by the two constitutional documents overlap in various ways. Most evidently this is the case for the three subsequent constitutional regimes stipulated by the Constitution Bill as they are modifications of one basic model which is after all also regulated in one and the same document. But also the present Interim Constitution is closely interconnected with the first 'transitional' regimes under the Constitution Bill ordering the continued validity of most constitutional bodies established under the Interim constitution.

Crucial in this respect, sect. 265 of the Constitution Bill orders that the National Council of Peace and Order (NCPO) which is the constitutionally institutionalized military junta[4] under the present Interim Constitution will continue to hold office until the new government (Council of Ministers) is appointed. This will be the case following the first general elections that might be expected at the end of 2017 or in 2018. During this first transitional period which forms the first of two transitional regimes or 'Transitional Constitutions' respectively, the NCPO will retain its powers as provided by the Interim Constitution (sect. 265 (2))[5]. This includes especially the exceptionally vast powers conferred to the Head of the NCPO and current Prime Minister[6] according to sect. 44 Interim Constitution. The continued validity of sect. 44 is considered as the true hallmark of the first transitional regime under the Constitution Bill. Effectively, sect. 44 acknowledges the concentrated supreme power of the state in the hands of the Head of the NCPO. According to it, the NCPO Head can take *every measure*, *no matter whether it is of legislative, executive, or judicial nature*, to repel a danger to public peace and order, the monarchy, the national economy, or the state administration. Unlike similar provisions of older post-putsch constitutions, however, this *undivided power* is also conferred to him to *strengthen national unity and harmony* and to *promote reforms in any field*. It is thus not solely an emergency power but fundamentally sets aside the boundaries between emergency rule and the ordinary exercise of state power. In effect it enables the 'normal' application of a supreme power that supersedes any constitutional competence or mechanism enabling the NCPO Head to operate independently from the legally defined channels of state power. In this sense, sect. 44 is actually used quite frequently with respect of various matters of national administration, effectively establishing a second, autonomous layer of constitutional rule that hovers above the ordinary constitution and the legal system. It thus represents the full constitutional power in a nutshell if not even *a constitutional regime on its own*. It should, however, be noted that this legally and constitutionally unbound power might be considered as being vaguely derived and defined in the unwritten framework of established Thai constitutionalism that would provide a notion of how to appropriately exercise this power. In this sense, sect. 44 is currently not used as an expression of an excessively suppressive regime for selfish purposes indeed but as the basis of a merely 'benevolent' form of "despotic paternalism". – As such the regime of Field Marshall *Sarit Thanarat* that marked the advent of the governance system, which is now struggling for its preservation, has been famously termed.[7] Anyway, the present sect. 44-regime employs a conse-quent yet comparatively restrained repressive stance [8] – reaching just as 'deep' as considered to be necessary to maintain control. Moreover, the frequent use of the absolute, undivided state power in conducting governmental business as usual has arguably to be understood largely as a continuously conveyed message to the Thai people. This would

1 61.4 % of the voter turn-out of 59.4 % approved the draft constitution, with 38.6 % rejecting it. Concerning the second referendum question on the participation of the Senate in the creation of the government in the 5-years transitional period the ratio was 58% "yes" and 42% "no"; see http://www.bangkokpost.com/news/politics/1058026/ official -charter-referendum-figures-posted.

2 In this article reference is made to the unofficial English translation of the Constitutional Draft 2016 provided by the Institute for Democracy and Electoral Assistance (IDEA), the Office of the United Nations Resident Coordinator, and the International Commission of Jurists, available at http://www.un.or.th/wp-ontent/uploads/2016/06/2016_Thai land-Draft-Constitution_EnglishTranslation_Full_Formatted_vFina....pdf.

3 This kind of multi-phase constitutionalism has been regulated in Thailand´s first permanent constitution of December 1932 and the 1976 Constitution as well.

4 Meanwhile the NCPO encompasses also some civilians.

5 Reference to provisions of the draft charter follows the form 'sect no (no of paragraph)'.

6 Head of the NCPO General Prayuth Chan-o-cha serves currently also as the present Prime Minister elected by the National Legislative Assembly that has been inaugurated by the NCPO after the 2014 Coup.

7 See Thak Chaloemtiarana, *Thailand – The Politics Despotic Paternalism*, Cornell University: New York 2007.

8 Despite this new kind of rule based on sect. 44 that has been established in the midst of a severe national crisis Thailand remains arguably still more liberal than any other ASEAN member state.

be the assurance that there still is a manifestation of the supreme power ensuring that the country will not fall into destruction after the ailing King, the "father of the nation" in an essential sense, has become unable to defuse the national crisis. The importance of this fact for the present constitutional project in general has been stressed to foreign observers by two leading figures of the first Constitution Drafting Committee (CDC) in 2015, *Borwornsak Uwanno* and *Navin Damrigan*[9]:

His Majesty, the soul or of our nation, being hospitalized, could not play any mediatory role in our ten-year long conflict. The institution has been unfairly criticized by those who are republican for not condemning the military. But if the crown had done so the institution itself would have been in grave danger and perhaps this would have led the country into a civil war.

The statement fairly reveals both the centrality of the King's role in established Thai constitutionalism and the magnitude of its current concussion that implies the possibility of protracted larger scale political violence when conflict erupts again. To respond to the double challenge of preserving a restated version of the established system as far as possible and preventing a catastrophic outbreak of conflict seems to be a major rationale underlying the subsequent interconnected constitutional regimes which might be conceived as forming a complex system of staggered lines of defense. Its contours are made up by the Interim Constitution, the 'first Transitional Constitution' to be set in force for the time between the promulgation of the Constitution Bill and the formation of the new legislature and government after the first elections, the subsequent 'second Transitional Constitution' enjoying validity for five years starting with the royal appointment of the Senate after the election and eventually the 'Permanent Constitution'.

Hallmark of the 'first Transitional Constitution' forming the first ring of fortification against the looming perils and its strongest cannon thinkable is sect. 44. Besides, the first 'Transitional Constitution' also stipulates that the NCPO, the cabinet and the present NCPO-selected National Legislative Assembly (NLA)will hold office until the new government and the House of Represen-tatives and the Senate respectively are formed after the first national elections (sect. 262, 264, 265). Other constitutional bodies under the present Interim Constitution supposed to continue to hold office during the first transitional period are the National Reform Steering Assembly and the Constitution Drafting Committee (sect. 266 and 267). The exact duration of this first transitional regime is dependent on the eventual promulgation of the constitution on the one hand and the election-based formation of the two Houses and the Cabinet on the other.

The second transitional regime under the Constitution Bill is then characterized by its specific selection, composition, and function of the Senate which will last for five years and contribute to the creation of the government.

In sum, there are thus four essentially different yet somehow connected constitutional regimes of present impact on constitutional politics in Thailand that have to be distinguished:

- the *Interim Constitution 2014* which is still in force until the Constitution Bill is promulgated;

- the *first transitional phase* under the five-year '*Transitional Constitution'* valid from the Constitution Bill's promulgation until the formation of a new government and being characterized in particular by the continuous validity of the powers according to sect. 44 Interim Constitution;

- the *second transitional phase* under the '*Transitional Constitution'* starting with the royal appointment of the Senate after the election, being characterized by a specially composed Senate that will participate in the creation of a government and lasting for five years after the Senators' appointment (sect. 269); and

- the *ordinary constitutional rule* of the *'Regular Constitution'* deemed to be permanent.

	Interim Constitution 2014	Constitution Bill		
		1st phase transitional regime	2nd phase transitional regime	Regular constitutional regime
Effective from/until	July 2014 - promulgation of Constitutional Bill	promulgation of Constitutional Bill – formation of new government	formation of new government – end of 5 years transition period	end of 5 years transition period - permanent
Characteristic features	Sect. 44	continuation of institutions established under the Interim Constitution Sect. 44	250-member Senate, involved in the election of the Prime Minister	200 member-senate which is not anymore involved in the election of the Prime Minister Sect. 5, Joint Committee
		National Reform and Strategy Plan		

Given the reach and the 'teeth' of sect. 44 and the fact that the 'Transitional Constitution' composed of the first and second transitional regime with its at least more than six years of validity will transcend the average lifespan of Thai constitutions since 1932[10], it is not so much the final, ordinary constitutional rule of the 'Regular Constitution' but the two transitional regimes which deserve the greatest attention for the time being.

C. Overarching Character and Basic Structure of the Coming Constitutional Order

To start the overview of the coming constitutional order it shall be asked first how far its overarching character and basic structure will reflect identity and change in Thai constitutionalism. Basically it might be said so far that the Constitution Bill contains no major surprise while it continues

9 Borwornsak Uwanno and Navin Damrigan,"Constitutional Drafting in Thailand", p. 1. The untitled, unpublished text has been circulated on occasion of a panel presentation of *Prof. Borwornsak*, *Gen-Lt Navin* and three other members of the then CDC at the Foreign Correspondents Club Thailand in Bangkok on 8 April 2015.

10 Since 1932 Thailand has had 19 constitutions with an average life span of 4.3 years.

the basic tenets of Thai constitutionalism where possible intensifying some core characteristics especially where it comes to containing electoral democracy. 'Continuity', however, is understood here as a form of consistent reproduction of the basic concepts of Thai constitutionalism with respect to the demands of the current context. This implies that continuity might entail the recourse to older constitutions like the 1976 Constitution for instance rather than taking over the respective solutions of the 2007 or 1997 Constitution. This perspective on patterns of continuity is complemented by a focus on new trends and features which are also displayed by the Constitution Bill. Altogether the Constitution Bill offers a middle way between continuity and change also in comparison with the 2015 draft Constitution. Clearly the latter has for instance displayed a greater eagerness to explore more far going elements of public participation in pursuing the cause of continuing established Thai constitutionalism. While the first draft represented the attempt to accommodate a broader range of 'loyalists' to the established system in doing so,[11] the present Constitution Bill represents rather a more military-bureaucratic leaning notion with respect of the preservative forces in the Thai society. Generally, this trend might reflect the possibility of a looming re-formation of the balances between certain quarters of the preservative civil society and (equally preservative) military-bureaucratic forces in an attempt to cope with the contingency and volatilities of the political process during transitional times. From the perspective of the drafters and their stakeholders it might have seemed too risky here to overstretch the underlying ideological formula and its institutional expression to accommodate all those system-loyal forces especially those that advocate a much stronger civil society participation in future politics. Less ambitious, arguably less broadly supported from within the 'preservative' camp, yet maybe more realistic in terms of predictability of the political process and more broadly supported by less engaged citizens, the present draft carries a different label than the first one with full justification: different from the 2015 draft which had been labeled the "People-centred Constitution,"[12] the Constitution Bill has been announced as the "Anti-corruption Constitution".[13] Both drafts, however, converge in repeating the tenets of established Thai constitutionalism by displaying a profound skepticism towards electoral politics that is accompanied by an explicit display of conservative moralism. Both elements have characterized Thai constitutionalism since long ago. Yet they surface now in a more determined form that is manifest especially in massively enhanced sanctions against individual political office holders. General characteristics of the Constitution Bill in all its three subsequent emanations are thus a radical enforcement of political ethics against individual office holders and a more forceful mission to 'morally' educate the people.

I. The Anti-political Stance

Concerning the anti-political or anti-electoral stance respectively that takes an even more vigorous shape in the Constitution Bill than in the 2007 Constitution pertaining to individual office holders, it might be reiterated that the basic trend was set decades ago. This notion – all but unknown to early American and European constitutionalism[14] – became only more explicit with the arrival of a vital challenge to the established constitutional system in the person of then Prime Minister *Thaksin Shinawatra*.[15] Yet, long before him, the basic structure of Thai constitutionalism, the 'democratic regime with the King as Head', had been characterized by an inherently ambiguous relation towards electoral democracy. Its mechanisms were deemed on the one hand as being valuable to provide a comparatively inclusive, legitimate and dynamic thus stable political system. Nevertheless, on the other hand electoral mechanisms were also considered to be carefully contained to prevent them from thwarting one of the central constitutional principles ruling Thai constitutionalism. This is the key norm that it is the King who exercises the sovereign power of the people through the divided state powers.[16] This constitutional core principle had arguably been challenged by *Thaksin's* claim to rule the country primarily based on a democratic legitimacy derived from elections rather than fully complying with his constitutionally defined role to serve as the His Majesty's loyal government under the 'democratic Regime with the King as Head'. This turned the formerly abstract caution towards electoral democracy into acute alertness that become manifest in the 2007 Constitution which can be read as an 'anti-Thaksin Constitution'. Continuing this line, the Constitution Bill represents only the latest phase of this intensifying trend. It merges the more recent notion of an acute danger formerly attributed particularly to the *Thaksin* challenge (whose electoral victory seemed preventable in 2007 and 2011) with the older more abstract anti-electoral notion. The current grand hegemonic narrative considers electoral politics as such thus as inherently inferior and an acute danger for the common good if it is entrusted to the established political caste.

II. Political-moral Rather Than Legal Constitutionalism

Similarly, with respect to the now dominant mode of constitutionalism, the typical conservative-moralist notion of established Thai constitutionalism becomes only more manifest and intense in the Constitution Bill. Like the profound anti-electoral stance which it complements in epistemic and functional terms it has to be seen against the perception of a possibly looming outbreak of the protracted constitutional and societal crisis which has only been frozen by the 2014 coup d´état and the regime established in its wake. Stronger than in prior constitutions, however, such a 'moralist constitutionalism' is directly pursued and expressed with respect to constitutional content and design rather than inhabiting the constitution more indirectly in form of the political narratives underlying the relevant constitutional arrangements.

In this sense, the Constitutional Bill gives way to more political rather than legal forms of decision-making at critical junctures. In general such a more 'political' (vs. more 'legal') constitutionalism[17] often implies also a distinct moral stance which can take basically two forms. A 'progressive' form is based on a forward-looking utopian morality of societal change as characterized by the leftist notions in early Thai Constitutionalism after the 1932 revolution. The conservative form that has characterized Thai

11 See for a possible differentiation of system-loyal forces in Thai constitutional politics Michael K. Connors, "Liberalism, Authoritarianism and the Politics of Decisionism in Thailand", in: *Contemporary Authoritarianism in Southeast Asia*, ed. William Case, New York: Routledge, 2010, pp. 85-103.

12 *The Nation*, November 7, 2014.

13 "The constituents and the constitution", *Bangkok Post*, July 31, 2016

14 Impressive Roberto Gargarella, *The Legal Foundations of Inequality: Constitutionalism in the Americas, 1776-186*0, Cambridge: Cambridge University Press 2010.

15 See for the challenge of the established system emerging in person of Thaksin and his governance conception Henning Glaser, "Constitutional Conflict and Restatement: The Challenge and Transformation of the Hegemonic Basic Consent in Thailand", in: *Norms, Interests, and Values – Conflict and Consent in the Constitutional Basic Order*, ed. Henning Glaser, Baden-Baden: Nomos, 2015, pp. 320.

16 See sect. 3 of the 1997, 2007 Constitution and the Constitution Bill respectively that stipulates: "The Sovereign power belongs to the Thai people. The King as Head of the State shall exercise such power through the National Assembly, Council of Ministers and the Courts in accordance with the Provision of this Constitution."

17 See for the distinction Henning Glaser, "'Multiple Constitutionalisms' – Constitutionalism and Good Governance in European-Asian Perspectives", in: *Constitutionalism and Good Governance, Eastern and Western Perspectives*, ed. Dirk Ehlers, Henning Glaser and Kittisak Prokati, Baden-Baden: Nomos 2014, pp. 32 ff.

constitutionalism almost uninterruptedly since 1947 is based on the other hand on a preservative stance oriented at values and order of the past.

With respect to the Constitution Bill this inherently conservative moral-political notion of Thai constitutionalism surfaces as more political rather than legal form of constitutional rule in one of its central norms, namely sect. 5. No other provision of the Constitution Bill reflects the current patterns of continuity and change of Thai constitutionalism more than this and not many are more important for constituting the constitutional basic structure.[18] In accordance with sect. 7 of the 2007 and 1997 Constitutions respectively the new sect. 5 (2) of the Constitution Bill stipulates that:

Whenever no provision under this Constitution is applicable to any case, it shall be acted or decided in accordance with the constitutional practice in the democratic regime of government with the King as Head.

With almost the same wording[19] the 1997 and 2007 Constitution acknowledged with this provision a supreme layer of unwritten constitutional norms rooted in the ultimate sovereignty of the King before and beyond the positively established constitutional law.[20] This unwritten 'super-constitution' has frequently been invoked by system-loyal forces between 2006 and 2013 calling for the exercise of a royal prerogative to replace then Prime Minister *Thaksin* or a Thaksin-close Prime Minister (namely Prime Ministers *Samak*, *Somchai*, and *Yingluck*). Reflecting the nature and rank of the norms referred to by the "constitutional practice in the democratic regime of government with the King as Head", the 1997 and 2007 Constitutions contained neither any further concretization of how to operate sect. 7 nor any designated institution that was charged with this duty. This changed, largely unnoticed, after the 2014 coup. Indeed, the presently governing Interim Constitution 2014 has introduced two major novelties in relation to the prior sect. 7 that have profoundly changed the provision's normative character. Firstly, the equivalent provision – now in sect. 5 of the Interim Constitution – requires that a decision based on the "constitutional practice in the democratic regime of government with the King as Head" would have to be *in accordance with the written constitution*. Secondly, it also *designates the one who is charged with deciding* on the basis of the "constitutional practice in the democratic regime of government with the King as Head":

In the case where the question concerning the decision […] arises in the affairs of the National Legislative Assembly, it shall be decided by the National Legislative Assembly. If the question does not arise in the affairs of the National Legislative Assembly, the National Council for Peace and Order, the Council of Ministers, the Supreme Court or the Supreme Administrative Court may request the Constitutional Court to make a decision thereon […].

Together, these two modifications of the Interim Constitution turned the normative character of the former sect. 7 upside down transforming the acknowledgement of a 'super-constitution' into a reference to an unwritten constitutional customary law to be applied *under* the Constitution. But this is not the last word on the changing content of this key norm. The Constitution Bill further modifies the principle substantially again. After repeating the old principle that "whenever no provision under this Constitution is applicable to any case it shall be acted or decided in accordance with the constitutional practice in the democratic regime of government with the King as Head" (sect. 5 (2)), sect. 5 (3) stipulates that:

In the event where the circumstance under paragraph 2 arises, the President of the Constitutional Court shall convene a joint meeting of the Presidents of the House of Representatives, the opposition leader in the House of Representatives, the President of the Senate, the Prime Minister, the President of the Supreme Court, the President of the Supreme Administrative Court, the President of the Constitutional Court, and the Presidents of the constitutional organizations to make a decision thereon.

According to sect. 5 (6), decisions of the newly introduced joint meeting – to be made by a majority of votes among the present office holders – shall be deemed final and binding on all representations of state power. Notably, the new sect. 5 requires no longer that decisions have to be made in accordance with the constitution like sect. 5 Interim Constitution did. Furthermore, the new sect. 5 shifts the power to decide or act on the basis of the unwritten principles of the "democratic regime of government with the King as Head" from the Constitutional Court/NLA respectively to a joint committee consisting of the heads of the different constitutional bodies.

Effectively, sect. 5 of the Constitution Bill establishes thereby a supreme council for 'special situations' which, however, are not at all defined. Neither is the scope of its actual powers. In effect, sect. 5 creates a vaguely defined ad-hoc politbureau-like commissarial power resting above the normal constitutional mechanisms. Due to its composition the large majority of its members can be expected to be ideologically homogeneous. In providing the possibility to switch from regular constitutional rule to the rule not by law but by political decision making of a supreme committee, sect. 5 resembles a notion of sect. 44 Interim Constitution and might even be described as a 'small sect. 44'. Yet, the major differences between sect. 5 and sect. 44 Interim Constitution are twofold: Firstly the powers according to sect. 44 are concentrated in the hands of the NCPO Head alone. Secondly and more important the powers according sect. 5 (3) are not supposed to be regularly exercised but as de-facto emergency powers of an ad-hoc committee to be convened under special circumstances even if not explicitly in a situation of national emergency.

While 2007 Constitution has been inclined to prefer a predominantly 'legally' shaped mechanisms to deal with such constitutional problems which resulted in a unique degree of judicialization of electoral politics, sect. 5 (3) reflects a modified approach to address the dangerous vagaries of electoral politics. It might be understood as expressing the conviction that the current context of a still looming divisional and transitional crisis requires means other than legal mechanisms alone. From the perspective of the Constitution Bill they seem to be regarded as being insufficient to prevent the majority-backed *Thaksin* camp from ruling the country again while another putsch is obviously deemed to be too costly not to be avoided by all other available means.

III. The Preamble

Telling in terms of the underlying trend of Thai constitutionalism and the modified basic structure is

18 See Henning Glaser, above fn. 15, pp. 331 ff.

19 Newly introduced with the Interim Constitution is the word "act" indicating the trend to a more political form of constitutionalism.

20 See Henning Glaser, above fn. 15, pp. 298 ff. To be precise, it has to be distinguished between three different meanings of the "constitutional practice in the democratic regime of government with the King as Head". The most important meaning is the reference to a super-constitution reinforcing the king's ultimate sovereignty, the second the acknowledgement of practices of unwritten constitutional customary law and the third one the acknowledgement of the need to interpret positive constitutional law in the light of the unwritten super-constitution. This latter meaning started to dominate the application not of sect. 7 but sect. 68 of the 1997/2007 Constitution which also referred to the "constitutional practice in the democratic regime of government with the King as Head" by a number of Constitutional Court decisions in 2012 and 2013.

the preamble.[21] Three aspects shall be highlighted. Firstly, the preamble confirms the traditional view on Thai constitutionalism by distinguishing the written constitution as a merely ephemeral phenomenon from the invoked longevity of the largely unwritten "democratic regime with the King as Head". According to the preamble the King is

graciously pleased to proclaim that; whereas the Prime Minister has informed the King that since His Majesty Prajadhipok Phra Pokklao graciously granted the Constitution of the Kingdom of Siam, B.E. 2475 [1932], Thailand has continuously upheld its intent to adhere to "the democratic regime of government with the King as Head". Despite annulment, amendments, and promulgation of Constitutions on several occasions […] the administration has not become stable or orderly owing to various problems and conflicts.

These words reflect more than just the fact that Thailand has had several codified constitutions since 1932 but implicitly also juxtaposes this fact with the invocation of the permanence of the Thai nation´s adherence to the unwritten constitution.[22]

However, given the profound changes of sect. 7 of the 2007 Constitution which formerly connected the written and the unwritten constitution, this acknowledgement might be read accordingly contextual. Yet, the formulation still confirms a dignified foundational narrative that also marks the hegemonic claim of a Thai *Sonderweg* of democratization.

Secondly, the preamble already reflects almost all of the important facets of the current manifestation of the long-term anti-electoral stance of Thai constitutionalism.

Linking the national calamity that it invokes as a part of its own raison d´être to the corruption of 'certain' people it makes clear for the 'audience' who is to be blamed:

Sometimes there have been constitutional crises with no solutions and partial causes thereof were attributed to people who ignored or disobeyed administrative rules, corrupted or distorted power or did not recognize their responsibility to the nation […].

Arguably this might be understood as alluding to those elected politicians who challenged the established constitutional basic structure and the societal fundamental consensus that it claimed to express. It has to be acknowledged in this respect how massively former Prime Minister *Thaksin's* sustaining bid for power stroke at the fundaments of both the constitutional basic structure and the hegemonic societal fundamental consensus in Thailand indeed – in particular after it had been reinforced by the Redshirt movement.

Furthermore, the failures of the past to which the current constitutional project aims to respond are also linked to the more general claim that Western-style democracy – essentially understood in this context as the translation of people's sovereignty through elections into political power - has to be rejected for the (current) Thai context. The preamble clarifies in particular that the "political and administrative rules" of the past – those leaning at the model of Western-style electoral democracy – have proven to be "not appropriate for the situation of the country and the time period". Moreover, the preamble claims that importance had been wrongly attached "to the format and procedure rather than the fundamental principles of democracy", in other words: to the electoral mechanism rather than good governance in the understanding of Thai-style democracy. The latter can be understood as being embodied by the King's centrality, the conception of a direct bond between king and people, and the values he represents.[23]

A notable expression of the current manifestation of the anti-electoral stance of the preamble lies in a detail of the 'ritual' language employed. As mentioned above, the preamble initially refers to one of the typically invoked foundational narratives of Thai constitutionalism according to which Rama VI has graciously granted the first constitution to the Thai people in 1932, since which time Thailand has continuously upheld its intent to adhere to the 'democratic regime with the King as Head'. Traditionally this announcement is never made by the People who are not directly speaking in the preamble in established Thai constitutionalism but by a narrator who reports about the constitution making. This typical pattern is repeated in the present preamble with an interesting modification. Here the constitutional 'narrator' reports that it was the *Prime Minister* who "informed" the King about the historical origin of Thai constitutionalism. Doing so, the preamble significantly deviates in a detail from the typical range of formulations. Wherever such a phrase has been used within the complex fabric of the fictive constitutional dialogue to be ritually reproduced by the preamble in previous constitutions like the 2007, the 1978 or the 1974 Constitutions, reference has been made not to the Prime Minister but to the President of the National Assembly (1978, 2007), or the National Legislative Assembly (1974) respectively.[24] This detail, the shift from a reference to the National Assembly to the Prime Minister indicates the special role of the present post-putsch government compared to previous ones. This is the facilitation of a political transition that faces not only a deep divisional split in society but also an inevitable transformation of the factual fundament of the society's normative basic structure. The formulation thus carries the notion of a small yet telling symbolic stratagem that also resembles the unique powers the NCPO Head enjoys under sect. 44 Interim Constitution. In this sense, both, the preamble and sect. 44 reflect the NCPO Head's role as the commissary guardian of the Thai nation. The message they convey leaves no doubt about the current regime's determination to restate the national order if necessary without recognition of electoral politics. This applies at least for the – maybe enduring – moment of an inevitable transition while electoral politics are anyway deemed to be the root cause for the national calamity of a deeply divided Thailand. Practically, this anti-electoral trend had most visibly

21 See generally for the normative impact of constitutional preambles see Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*, Princeton: Princeton University Press 2009, p. 12; for their importance for constitutional interpretation Jeff King, "Constitutions as Mission Statements", in: *Social and Political Foundations of Constitutions*, ed. Denis J Galligan and Mila Versteeg, Cambridge: Cambridge University Press 2013, pp. 73, 84; Justin Orlando Frosini, *Constitutional Preambles: At a Crossroads Between Politics and Law*, Rimini: Maggioli 2012. See further Marie T. Fögen, "The Legislator's Monologue: Notes on the History of Preambles", in: *Chicago-Kent Law Review*, Vol. 70, 1995, pp. 1593-1620, available at http://scholarship.kentlaw.iit.edu/cklawreview/vol70/iss4/10; Liav Orgad, "The preamble in constitutional interpretation", in: *International Journal of Constitutional Law*, Vol. 8, 2010, pp. 714-738. Especially on the preambles of Thai constitutions see Andrew Harding, "Dynamics and Problems of Constitution-Making in Asia and Beyond", in: *Constitution Reform: Comparative Perspectives*, ed. Andrew Harding and Thawilwadee Bureekul, Bangkok: King Prajadhipok's Institute 2009, pp. 281, 288.

22 See also the preamble of the 1997 Constitution according to which the King is "graciously pleased to proclaim that whereas Constitutions have been promulgated as the principle of the democratic regime of government with the King as Head in Thailand for more than sixty-five years; and there had been annulment and amendment to the Constitutions on several occasions, it is manifest that the Constitution is changeable depending upon the situation in the country."

23 See Henning Glaser, "Visions of the Good Society: Good Governance, Corruption and Public Law – Reflections on Selected Thai, German and Global Discourses," in; *Thammasat Law Journal*, Vol. 44, No. 2, 2015, pp. 384-414.

24 Different from the usual foundational monologue embodied in the claim of a "We, the people", Thai constitution's preambles have typically recounted a ritual dialogue between the king as the holder of the ultimate, un-constituted sovereign power and the representatives of the constituted power, normally the somehow addressed legislature (or the de-facto power of a coup-group respectively which, however, would be considered to have to act under the unwritten constitution as well as according to Thai constitutional theory).

manifested in the Interim Constitution's decision to exclude political party members from the National Legislative Assembly by sect. 8 Interim Constitution 2014[25] and continues in the recent NCPO's decision that even after the referendum political parties are not allowed to gather for preparation for the next election.

Thirdly, the preamble also contains a twofold mission statement. On the one hand, the constitutional project that it is initiating is supposed to serve the national (re)education of the people to be good citizens for the sake of "a moral and ethical system". At the same time it is decisively directed at "preventing leaders or officials of no morals, ethics and good governance from taking power" and determined to enable national reform for these two purposes in particular.

The suspension of full-blown Western-style democracy especially under the 'Transitional Constitution' has to be seen in direct relation to these interconnected projects of national reform and public education.

IV. Stability and 'Militance' of the Constitution

Pertaining to the stability of the new constitution, the present Constitution Bill – like many constitutions that are specifically protecting their basic structure – excludes any changes of the monarchical form of state and the 'democratic regime of government with the King as Head' (sect. 255). Furthermore, it provides a comparatively unusual mechanism that makes the coming Thai constitution one of the most rigid in the world – a quality it will share with the US Constitution for instance. While an amendment requires only an absolute majority of both legislative Houses – instead of the two-thirds majority that many other constitutions would require – the quorum is nevertheless an unusually demanding one. In fact, this seemingly moderate majority must contain not less than 20% of the total number of the members of parliament of all political parties that are *not represented* in the cabinet or among the President *and Vice-presidents* of the house (sect. 256 (6)). Given that the President and Vice-presidents of the House represent both the governing party as well as the biggest opposition party, this requirement implies a unique and substantial role of what could be called the 'minority-opposition'. The fact that the 'leader of the opposition' enjoys a traditionally acknowledged constitutional role in Thai constitutionalism which is reflected in sect. 106 (1), and the requirement that not just a part of the opposition but that part which is not connected to the leader of the opposition has to support an amendment underlines another unprecedented feature of the Constitution to come. Effectively it introduces a third somehow formalized parliamentary division besides those between the parliamentary majority and the biggest opposition party: the minority opposition.

Furthermore not less than one third of the existing members of the Senate have to additionally support the amendment (sect. 256 (6)) which eventually even has to go through a referendum if it affects a number of enumerated issues especially those constituting the tight disciplinary regime on electoral politics (sect. 256 (8)). In effect, any amendment of the Constitution is not only highly unlikely but also outright impossible if it is not supported by virtually all political powers represented in the National Assembly including the non-elected and the minority opposition parties beyond the leading opposition party.

Concluding, with respect to amendments the Constitution will provide a rock-solid fundament of constitutional politics of rare stability or rigidity

25 Sect. 8 stipulates that "a member of the National Legislative Assembly shall not be under the prohibitions as follows: (1) being or having been a person holding any position in a political party within three years prior to the date of appointment as a member of the National Legislative Assembly […].

respectively.

Concerning the Constitution's 'defensive ability', sect. 49 contains a mechanism of militant constitutionalism that had in principle been introduced by the 1997 Constitution already and had also been contained in the 2007 Constitution, – both times in sect. 68. Having been of lower importance under the 1997 Constitution, sect. 68 of the 2007 Constitution turned out to be instrumental to prevent *Thaksin*-loyal forces from challenging the established balances of power by constitutional amendments. In this sense, the norm served as major normative base for a number of highly divisive Constitutional Court decisions on 'mega politics' invalidating all proposed constitutional amendments that would have changed the balances of power including the full election of the Senate. The mechanism of sect. 68 gave everyone the right to request the Constitutional Court to intervene against anyone's attempt to exercise fundamental rights to overthrow the basic structure or the constitutionally constituted government. As such it has been adopted by the Constitution Bill in its sect. 49 again – yet in a modified form. Two changes have been made. The first pertains to the scope; the second to the procedure of the provision.

Sect. 68 of the 2007 Constitution stipulated everyone's civic right to act as a defender of both the basic structure and the constitutionally constituted government. Everyone could request the Constitutional Court to intervene against all acts aimed at overthrowing the democratic regime of government with the King as Head or at acquiring "the power to rule the country by any means which is not in accordance with the modes provided in this Constitution", in other words by non-electoral means. The latter are basically military coups d'état and civic mass movements aiming at obstructing an elected government for the purpose of forcefully unseating it by constitutionally not accepted means of civil disobedience. While such a provision might practically hardly be raised against successfully conducted coups which will normally create a constitutional fait accompli, the provision has indeed – yet unsuccessfully – been invoked several times against the civic protest movement under the leadership of former Democrat party general-secretary *Suthep Taugsubhan* in 2013 and 2014 by actors loyal to the *Yingluck*-government. However, the new sect. 49 does not create such a right to request the Court's intervention against attempts to obtain the governmental power by any unconstitutional means anymore. Now, intervention is possible only against acts claimed to be directed at overthrowing the constitutional basic structure. Likewise, the Constitution Bill lacks also another provision which has been contained in the 1997 and 2007 Constitutions, namely sect. 69 as another emanation of militant constitutionalism. This sect. 69 granted the right to "resist peacefully any act committed for the acquisition of power to rule the country by a means which is not in accordance with the modes provided" by the Constitution (see sect. 69 of the 2007 Constitution). Functionally the narrowed scope of sect. 49 fully corresponds with the deletion of the provision having been contained in sect. 69 of the 2007 Constitution. While the new version of the right regulated in sect. 49 still enables individuals to request intervention against claimed enemies of the constitutional basic structure to be practically mobilized in line with the anti-electoral stance of the Constitution Bill, the omission of the former sect. 69 of the 2007 Constitution additionally expresses a general distrust towards civic mass movements with respect to substantial constitutional politics – including those which were active before the 2014 coup against the *Thaksin* camp. These modifications in relation to previous constitutions also reflect the above mentioned differences with respect to the 2015 draft (sect. 31 and 68).

The second change that manifests in sect. 49 pertains to the prescribed *procedure* to request the Constitutional Court to intervene against acts attempting to overthrow the 'democratic regime of government with the King as Head'. Under the 2007 Constitution it had been stipulated that citizens would have the right to request the Prosecutor General to investigate the facts of such an alleged attempt to submit a motion to the Constitutional Court for ordering its cessation if sufficient evidence would be found. After the Prosecutor General did not submit a request to intervene in an ongoing amendment of the constitution in 2012 and 2013, however, the Constitutional Court had directly accepted a civic request independent from the Prosecutor General. This has caused a dispute over the interpretation of sect. 68 which was interpreted by anti-Thaksin forces broadly to enable the Constitutional Court to intervene most effectively. It is against this background that sect. 49 (3) stipulates that everyone has a right to directly submit a request to the Constitutional Court in the case that the Prosecutor General either rejects the request to intervene or fails to act as requested within 15 days after having received it. In other words, the procedural involvement of the Prosecutor General has no function any more other than to maximally stall the forwarding of a request to the Constitutional Court for 15 days. This reduction of the role of the Prosecutor General might also be seen as an expression of the trend from a more legally to a more politically shaped form of constitutionalism.

D. Electoral Democracy and the Efficient Center of Power

This leads directly to the heart of the constitutional order that is to be established on the basis of the Constitution Bill, the allocation and design of the legislative and executive powers. The crucial question here is how electoral democracy can be weakened while the government retains at least the chance to form an efficient centre of political power. The latter has to be considered as necessary to provide the country with sufficiently steady steering impulses to sail through the rough waters to come. The dilemma the drafters have faced so far consists of three overarching imperatives. While they all had to be equally obeyed, their possible fulfillment seemed to essentially contradict each other. Here, the actual solution provided by the Constitution Bill impressively proves the creativity and constructivist ability of the drafters.

The first of these imperatives was to realize the anti-electoral agenda supposed to contain the dangers associated with electoral politics more profoundly than ever before. The second imperative was to respond to the concurrent need to ensure at least the chance of effective government for the sake of a deeply divided nation in the midst of a transitional crisis in an increasingly competitive regional environment. However, to do so in the framework of a parliamentary system which the drafters were supposed to continue seemed to inevitably contradict with the need to weaken electoral politics. Thirdly, even if less pressuring than the other two imperatives the drafters had to meet the – decreasingly ambitious – international demands requesting Thailand to remain somehow democratic, basically to be proven by proper elections. How did the drafters master the achievement of the almost impossible?

I. Containing Electoral Democracy: Parliament and Political Parties

Based on the aforementioned, the project to further contain or weaken electoral democracy shall be tracked only selectively by some examples.

Given a detailed catalogue defining the positive and negative qualifications to become a member

of the National Assembly (formed by the House of Representatives and the Senate), section 82 entitles a group of 1/10 of the members of both houses to lodge a complaint on the termination of the membership of any of their colleagues for a variety of reasons. Sect. 82 (1) in connection with sect.101 (6) and sect. 98 (1) for instance foresees the possibility of such a complaint due to the allegation that representatives are addicted to narcotics. The complaint to the President of the respective House would have to be forwarded according to sect. 82 (1) to the Constitutional Court which, before its final decision on the membership, shall order such member according to sect. 82 (2) to cease to perform duties *on reasonable suspicion* that the allegation is true.

Another, even more efficient mechanism to hold political office holders and members of public bodies tightly accountable is entrusted to the Election Commission and the National Counter Corruption Commission respectively. Both are commissioned with supervising the proper conduct of electoral politics and public power and requested to take action as well alone as in in cooperation with the Supreme Court.

The Election Commission, according to sect. 224 (3) has the far-reaching power to suspend, restrain, alter or cancel any national or local election or selection if there is a *reasonable doubt* that the election or selection in question was not honest or fairly or lawfully conducted. The provision entitles the EC which is called to "govern" the respective election/selection (section 224 (2)) with an unusual power. Its principled relevance has been proven during the constitutional crises in 2006 and 2014 when Prime Ministers *Thaksin* and *Yingluck* respectively called for new elections. In the first case that happened to strengthen the challenged political position of Thaksin, in the case of then Prime Minister *Yingluck* after the oppositional Democrat Party had left parliament forcing her to call for new elections to continue her government. As even smaller transgressions of the generally tightly defined rules of political campaigning might be considered as relevant incidents, the provision could provide a practically powerful instrument to intervene in the course of elections on the basis of reasonable doubt.

Moreover, the EC, which is also responsible for governing the operations of political parties based on the Organic Law of Political Parties (see sect. 224 (5)) which still has to be drafted can, according to section 224 (4), *suspend* the right of a candidate to apply for candidacy in an election/selection for up to *one year based on a reasonable suspicion* against the respective person. This suspicion can cover the belief, "that such person has committed an act or known of the act committed by another person in a dishonest fashion or causing the election or selection to be dishonest or unfair". Arguably this very broad formulation will have to be interpreted in the sense of 'dishonest behavior *in relation to the election/selection*' and 'the knowledge of such a behavior *without taking measures against it*'. However, even with this restrictive interpretation, the provision provides a far-reaching competence to eliminate candidates in the context of elections/selections on grounds of suspicion and without stipulating (yet) what has to happen if the suspicion turns out to be wrong after the selection/election. However, the final decision has to be made by the Supreme Court. If the alleged person is a member of the House of Representatives or Senate her or his legislative mandate will be suspended according to 226 (3) until the Supreme Court "has rendered its decision of innocence". The implied reversal of the burden proof is obviously representative for the general trend.

Moreover, according to 226 (1) and (2), the EC is entitled to request the Supreme Court to revoke

the right to candidacy and the right to vote of the 'suspect' of such a dishonest behavior in the context of election for up to 10 years.

Similarly sharp are the measures the National Counter Corruption Commission (NCCC) is entitled to take or to seek in cooperation with the Supreme Court respectively. The NCCC, according to sect. 234 (1), has to inquire if persons holding political positions, Justices of the Constitutional Court, persons holding office in one of the constitutional organizations or the Auditor General might be unusual wealthy, having been corrupt, having unlawfully over-exercised their powers, having seriously failed to comply with the ethical standard or having deliberately declared their assets wrongly (see sect. 235 (9)). If more than a half of the nine members of the commission is convinced that an alleged violation has occurred, the NCCC will refer the case to the Supreme Court with the consequence that the accused person shall cease to perform duties until the judgment is made (according to sect. 235 (5)). If the Supreme Court finds the accused person guilty of the offence it will revoke the right for candidacy in an election according to sect. 235 (5) and (6) *for life*. The potentially most incising grounds for interventions are the unlawful over-exercise of powers and the serious failure to comply with an ethical standard which according to sect. 219 has to be jointly defined by the Constitutional Court and the Constitutional Organizations. That this ethical standard is considered as a very serious instrument by the Constitution Bill is implied in sect. 276. According to this section, all members of the organizations commissioned with developing the standard will vacate office if the latter do not provide the ethical standard within one year from the promulgation of the Constitution.

In general, the combination of temporary suspensions on suspicion with broadly defined grounds for intervention and sharp means of intervention like the cancellation of elections or the revocation of the right to be candidate in elections for life will equip the respective agencies with large powers to impact electoral politics. Details however will be implemented by the various organic laws to be drafted. Concerning the political parties, the basic decisions with respect to the election law in sect. 83 ff. and in the Organic Act on Elections to be drafted will most probably be inclined to weaken the bigger parties, especially the PT and the DP, while middle-sized parties will have better chances to gain relatively in weight. This would eventually result in a more fragmented and overall weakened parliament.

What can be followed from these observations is a tendency to continue the established anti-political regime that has characterized Thai constitutionalism since long before the recent coup in a way that *further magnifies* the arsenal available yet *with special respect to single politicians and office holders* rather than political parties as such. In so far, there is another remarkable tendency palpable in comparison to the past constitution of 2007. A key instrument having been introduced by this 2007 Constitution which was based on a prior Junta Regulation after the 2006 coup d´état against then Prime Minister Thaksin was sect. 237 of the 2007 Constitution.[26] It stipulated:

Any election candidate who acts or causes or supports others to act in violation of organic law on the election of members of the House of Representatives and the source of senators, or Rules or Notifications of the Election Commission, which results in the elections to be in dishonest and unfair manner, the electoral right of such a candidate shall be revoked under the organic law on the election of members of the House of Representatives and the source of senators.

Pertaining to the act of such a person under paragraph one, if convincing evidence has appeared that any leader or member of executive committee of a political party connived at the act, or knew it but did not thwart or corrected the incident to ensure the honest and fair election, it shall be deemed that such political party acted to acquire the ruling power over the country through means not in accordance with the way prescribed in this Constitution under Article 68. In the case where the Constitutional Court orders to dissolve that political party, the leader and members of executive committee of such political party shall be revoked their electoral right for a period of five years as from the date the order dissolving the party is effective.

Effectively this provision served as a veritable demolition block within Thai electoral politics whose activation heavily weakened the *Thaksin* camp leading not only twice to the dissolution of its political parties but also to the political beheading of the remaining political movement by banning almost its whole leadership for five years from politics. This powerful mechanism is not any more contained in the Constitution Bill raising the question why After all it had proven to be immensely efficient for the constitution's anti-electoral cause which remains basically the same. While sect. 237 was conceivably efficient indeed allowing to link a political party's fate to the actions of a single election candidate or executive member respectively and in turn that of all other individual executive members to the fate of the party it also proved to be a double-edged sword that was too sharp not to be potentially dangerous for the cause it was serving. This became clear when the Democrat Party – then a cornerstone of the preservative coalition – had to be indicted by the Election Commission based on findings of the Department of Special Investigation (DSI) and escaped its technically mandatory dissolution by the Constitutional Court only by a whisker.

Even if it is not impossible that a similar provision will later be introduced in form of the Organic Act on Political Parties which is currently in the making such a move seems not very probable as the old sect. 237 was too important to be omitted in the Constitution Bill just to be reintroduced by an Organic Act. What would the omission mean then? Firstly it seems to express a lesson learnt concerning the risks of handling highly 'explosive' constitutional features with huge mandatory impact. More fundamentally it also seems to reflect a shift in the general anti-electoral strategy under the Constitution Bill. The application of the former shotgun-approach seems to have been replaced by a more precise strategy of controlling the vagaries of electoral politics by primarily focusing on the behavior of individual politicians that however, can be stroke harder. Given that such a move does probably not dominantly reflect the influence of the Democrat Party during the CDC deliberations it might be pondered if it can be understood as reflecting notion from the powers-that-be that they will have to actively entrench their involvement in constitutional politics in form of electoral politics for the foreseeable future. While this would be considered by some parts of the polity as a problematic engagement – based on an understanding that the militarily based power should remain correctional and instrumental to good governance rather than continuously taking it over – this would be a consequent move consistent with the new realities of constitutional politics.

After all, the polity will require efficient government to be lastly provided somehow on the basis of electoral politics. Given a determined decision in favor of a completely exclusive approach towards the described divisional crisis that is accompanied by an equally determined strategy not to rely any

26 See also para 3, Announcement by the Council for Democratic Reform, No. 27: Amendment of the Announcement by the Council of Democratic Reform No. 15, 21 Sept. BE 2549 (2006), announced on 30 Sept. 2006 by General Sonthi Boonyaratglin.

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more on the potential of the biggest opposition party of the recent decade to contain the vagaries of uncontrolled electoral politics with respect to the *Thaksin* camp such an engagement seems to be the only responsible choice from the perspective of those consenting to the mentioned underlying assumptions. This is even more compelling with respect to the shift from embracing an active role of loyalist mass movements in the 2007 Constitution and the 2015 draft to a much more restricted stance towards 'street politics' as reflected in the modified shaping of 'militant constitutionalism' (see above).

Moreover, the adjusted strategy to contain electoral democracy by focusing on single politicians and officeholders and weakening the parliament as such rather than directing 'defensive' potentials at the political parties entails another chance also. It might in fact serve future 'reconciliation' efforts by eliminating only the persisting 'problematic' members of political parties and those used as a warning example whereas the remaining rank-and-files executives could be co-opted and re-integrated in the constitutional process. After the 2006 coup d´état the dissolution of former government coalition parties including the ban of their executives for five years from politics drove many indeed onto the anti-establishment side of the political divide where neither their mentality not their political conviction would have brought them otherwise. If such a rationale would work oput remains to be seen and it ambiguous however displaying potential both to weaken as well as to strengthen a future government. With this ambiguity drafters took account of the fact that the outcome of coming general elections remains at least theoretically open even if it seems to be largely predetermined by the 'Transitional Constitution'. Yet, surprises in the wake of elections are not new since the political crisis started. Few expected a landslide election victory of pro *Thaksin* and *Thaksin* associated forces in 2008 and 2011. Moreover, some of those who have supported the Constitution Bill in the recent referendum did so arguably not because they supported its cause but to pave the way for elections which they are convinced to win. Furthermore, the rift between pro-military and more civilian minded forces loyal to the established form of constitutionalism could lead ideologically very heterogeneous civil forces to join a new coalition comprising both parts of the anti-*Thaksin* camp and Thaksin supporters even if such scenario is highly unlikely. Nevertheless, despite the adopted mechanisms to control electoral politics drafters could not refrain from being cautious. Recent years have proved them the importance of that lesson again and again – and it has been learnt. Prominently this is reflected by the introduction of the de-facto 'Supreme Council' according to sect. 5 (3) which however, might be sufficient to eliminate a 'wrong' government but not to provide continuous governance and national administration. In other words, the drafters had not only to take cautious measurers against the potentiality of an unwanted government but were at the same time also called to enable a government of the 'right' men as well. The realization of this latter aim in the framework of the given parliamentary system was however, still profoundly aggravated by the weakening of the House of Representatives and the political caste as such.

II. The Efficient Center of Power: A Senate backed Government

Pertaining to the shaping of governmental power the Constitution Bill continues the path of established Thai constitutionalism with some notable adjustments. More than those pertaining to the House of Representatives, the actual modifications are more

Before the resulting constructive paradox and the solution suggested by the drafters are assessed in more detail, some of the new features shaping the government shall be presented with respect to the underlying ambiguity they reflect.

A comparatively unusual provision that is unprecedented in Thai constitutionalism regulates the nomination of prime ministerial candidates in the pre-election period. According to sect. 88 in connection with sect. 159 each political party which occupies not less than 5% of the total number of the existing seats in the House of Representatives that wishes to provide a candidate for the position of the Prime Minister has to follow a specific procedure. Prior to the general election such a political party has to present a binding list with not more than three persons as candidates to the EC to be announced to the public. What is the impact of these modifications of the established rules? Arguably they will provide some predictability for the powers-that-be while they limit the space of maneuver for the political opposition during the election campaign.

Meanwhile, much more important and also different from the 1997 and 2007 Constitution, the Prime Minister no longer has to be a member of the House of Representatives, a modification that is inclined to favor the current government dominated by former and active soldiers. For them it is preferable to avoid a party membership as far and long as possible. This has two reasons. First, party politics represent an almost ritually 'impure' sphere of public power which to avoid is generally part of a latent potential of legitimacy of military leaders, judges and bureaucrats. Second, party membership would make it more difficult to particularly avoid the impression of a personal interest in the political power game which could in turn undermine the legitimacy to lead. Therefore, it is important for the powers-that-be to ritually separate the 'pure' (thus non-electorally derived) from the 'impure' power for as long and as much as possible while retaining the benefit that a candidate to be announced by a political party on the list does not necessarily have to be an elected Member of Parliament. This is crucial modification in comparison with the last constitutions. Sect. 171 (2) of the 2007 Constitution ordered for example that the "Prime Minister must be a member of the House of Representatives being elected under" the relevant provisions. In contrast, according to the equivalent sect. 158 (2) of the Constitution Bill the "Prime Minister must be appointed from the person approved by the House of Representatives pursuant to section 159". According to sect. 159 the Prime Minister has to be elected from the list provided by the political parties according to sect. 88 and has to have the qualifications stipulated by sect. 160 in connection with sect. 89 (2) which contains old and new criteria as well. Among the latter is the requirement to have not seriously violated or failed to comply with the ethical standard (sect. 160 (5)) as to be defined according to sect. 219 (see above). The negative criteria are the same as for members of the National Assembly including for example the mentioned prohibition to be addicted to drugs (sect. 160 (6) in connection with sect. 98 (1)). *Not* among the required criteria to be nominated as candidate to become Prime Minister however is to have a parliamentary mandate. It is therefore possible for any political party to nominate as a candidate someone who is not even running for parliamentary election allowing to keep the fiction of an 'unpolitical' Prime Minister only loosely connected to the 'lowlands' of political party politics.

Another new provision is sect. 158 (4) which stipulates that no one is entitled to hold the office of the Prime Minister longer than a total period of more than eight years "notwithstanding consecutively or not". One might understand this provision as not only preventing attempts of political leaders with too high and questionable ambitions in the future from establishing a long-term rule but also as sending

a signal to the public as the powers-that-be might remain longer in office than some of their supporters might have initially expected. The limitation of sect. 158 (4) might be read in this light as an assurance that they will not overstretch their grip on power.

A new feature of potentially large impact is the way in which the – principally formerly known – 'collective responsibility' of each Minister (sect. 158) is regulated by sect. 164. According to it, any Minister is not only responsible to the House of Representatives for matters pertaining to his or her own duties and powers according to sect. 151 and 152 but also *collectively* to the *National Assembly* for the *determination and implementation of the cabinet´s policies*. Remarkable is the potential weight of this duty. According to sect. 164 (1), the Cabinet is not only bound to carry out the administration of state affairs according to the Constitution and the laws but also to the *policies it has to declare* initially to the National Assembly. This formulation could be interpreted in the future in a way that would make the fate of the whole government effectively dependent on the actual compliance of every Minister with the initially declared policies of the Cabinet.[27] In the light of section 164 it could be argued that deviations from the initially declared governmental policies would amount to a deliberate exercise of public power "in a manner contrary to the provisions of the Constitution" according to sect. 234 (1) which could potentially result in the removal from office of all members of Cabinet and an issuing of a lifelong ban from candidacy in elections against them. Given the low threshold pertaining to the practice of impeachments of Ministers (including Prime Ministers) as established by the Constitutional Court between 2008 and 2014 such an interpretation would well be in line with the actual standard.

Moreover, the collective responsibility for the determination and implementation of the declared Cabinet's policies might also be linked to the government´s duty to carry out the 20-year national reform plan according to sect. 257 ff. which will be implemented by a "Law on National reform Plan and Strategy" according to sect. 259 (1) and (2). This law will have to prescribe all aspects of national reform related to planning, participation, implementation, evaluation and schedule. In fact, concerning the National Reform Plan the government will be tightly responsible towards the Senate (sect. 270). During the (second) 'transitional period' the Senate has the duty and power to "follow up, recommend, and accelerate the national reform". In this regard, the Council of Ministers is obliged to inform the National Assembly on the progress of the implementation of the national reform plan *every three months*. Significant is sect. 270 (3). It stipulates that the government will have to announce to the National Assembly whether any bill is intended to serve the national reform plan that it has to pursue. Furthermore a joint committee composed of the President of the two Houses, the leader of the opposition, one representative of the Council of Ministers and a chairman of one of the standing committees can be requested to decide if this is the case. Consequently, the government will not only have not much room in defining both its policies and its strategy to pursue national reform according to the relevant Chapter 16 of the Constitution and the corresponding law.

Arguably, the government will have to refer in its initial policy declaration to the National Reform Plan which in turn carries considerable weight in the light of the above mentioned provisions of the Constitution. This would have two effects. The government's policies would be closely determined by the reform plan while linking the policy declaration to the reform plan would strongly reinforce the corresponding duties of the government in observing fulfillment.

From here, it seems to be rather possible to argue that a failure to implement the announced policies of the government would indeed amount to a deliberate exercise of public power "in a manner contrary to the provisions of the Constitution" according to sect. 234 (1).

Functionally, such a mechanism would resemble the responsibility of party executives for offences attributed to political parties due to misbehavior of single party candidates or executives respectively as it has been stated by sect. 237 of the 2007 Constitution which is not contained in the Constitution Bill any more. Such a mechanism would however be less rigid as those established by sect. 237 which compellingly requested legal consequences for cases often leaving not much space for factual interpretation. Differently, the new mechanism would allow broader discretion on the level of factual assessment as well as of judicial interpretation in determining if and in how far a Minister would have failed to implement declared policies and in how far this would be a deliberate exercise of public power "in a manner contrary to the provisions of the Constitution".

Differently regulated as in former constitutions is also the *vote of no-confidence* according to sect. 151. Different to the 1997 and 2007 Constitutions it is not anymore a constructive vote of no-confidence that would require the combination of the withdrawal of confidence from the incumbent with the election of a new Prime Minister.[28] New also is that the request to hold a vote of no-confidence can be submitted only once in a year (sect. 154). Given that the vote of no-confidence is normally primarily or even exclusively (like in Germany) directed at the Prime Minister it is remarkable that the new constitution does not explicitly mention the Prime Minister in this context (sect. 151) anymore as it did in the case of the 2007 Constitution. Mentioned now are only the individual Ministers or the Council of Ministers. Unlike the rules pertaining to the declaration of governmental policies and the fulfillment of the 20-year reform plan these changes can be read as an inclination to strengthen the office of the Prime Minister. If there is a common denominator of the changes pertaining to the vote of no-confidence in relation to the 2007 Constitution it might indeed be seen in a certain reserve of the drafters to connect the office of the Prime Minister too firmly with the confidence of the parliament while the instrument is retained in principle.

In sum, the changes in the constitutional shaping of the government might be understood as reflecting the above mentioned ambiguity with notions to strengthen as well as to weaken the government caused by the uncertainty whether future governments might be considered to be favorable or unfavorable from the perspective of the drafters. Given that it is likely that coming governments under the 'Transitional Constitution' will be compliant with the Constitution´s rationale (see below), the cabinet's newly shaped collective responsibility might be primarily seen as a further guarantee to prevent a government that would supposed to be detrimental to the constitutional basic structure especially under the 'Permanent Constitution'.

These considerations are leading to the drafters' greatest challenge. This is the formation of government. Here the challenge was more than just to prevent leader of no moral from taking power again as the preamble says. Given the rules of the game in the parliamentary system according to which government is largely dependent on the governing majority in parliament and given further that electoral politics are supposed to be generally weakened the

27 Functionally, the mechanism would remind in this interpretation of the responsibility of party executives for offences attributed to political parties due to misbehavior of single party candidates or executives according to sect. 237 of the 2007 Constitution whose regulatory rationale is not contained in the Constitution Bill any more.

28 For the 1997 and 2007 Constitution, see a good overview in Harding and Leyland, *The Constitutional System of Thailand: A Contextual Analysis*, Oxford: Hart Publishing 2011, pp. 77 f.

formation of government posed two problems: As both of the two leading political parties turned out not to be overwhelmingly supportive for the constitution the parliamentary creation of the government was one problem to handle. The second one was the central constructive problem of how to provide at least the chance of a strong government by the 'right' people if the first problem would be solved. Indeed, the *formation of government* seems to be angle point of the whole constitutional project. One could argue so far that the powers-that-be have already enough influence due to the fact that they dominate the joint committee to be set up according to sect. 5 that would be commissioned with the application of a constitutional 'super-power' as described above. Yet, this committee would not be enough. While it indeed enjoys powers that might provide an efficient insurance against unexpected deviations from the preferable path of constitutional politics it is still just an ad-hoc committee. In particular it will not form the basis for the steady administration of the country in terms of regular day-to-day politics. In the light of the range and intensity of the challenges the country faces, the creation of such an efficient yet largely 'negative' commissarial power might be considered as a necessary but not sufficient solution to ensure that the country is constantly steered through the difficult waters ahead. At this critical juncture the drafters found a constitutional formula that seems to address the guiding imperatives of their task in the potentially most successful available way. Beside the continuation of the NCPO's rule during the first transitional period (sect. 265) until a new government is formed this formula might be considered as the very core of the 'Transitional Constitution' governing its second phase. It is realized in form of the particular constitutional function and composition of the Senate during the first five years after the first elections.

In two ways the 'Transitional Constitution' which is regulated largely in the last chapter of the Constitution Bill (sect. 262-279) provides a very different shape and function of the Senate compared to the 'Permanent Constitution'. Most crucial is its enhanced function which the Senate derives not directly from the initial Constitution Bill but an independent question of the constitutional referendum. By it the voters were asked, additionally to the first question if they would approve the Constitution Bill, whether they would allow the joint houses of Parliament to "consider approving the appropriate person to be appointed as prime minister during the first five years after a general election"[29] In other words, the second referendum question was whether the Senate should participate in designating the Prime Minister. As a detail, the intricate formulation of the question – which as such seems principally unusual for a popular referendum – cautiously avoided mentioning the fact that the Prime Minister is *elected* by the Assembly. However, the functionally decisive second referendum question was eventually positively answered paving the way for a corresponding adjustment of the Constitution Bill which is under way. Together with the initial provisions on the 'transitional' Senate pertaining to its composition it forms the backbone of the 'Transitional Constitution'.

Crucial is already the different composition of the Senate compared to those under the 'Regular Constitution'. This applies to both the selection procedure as well as to the number of Senators. The importance of the Senate precisely for the creation of the government during the second 'transitional period' is reflected by the fact that the 'transitional Senate' comprises 250 members rather than 200 as under the subsequent 'Regular Constitution'. Even if also the latter will be selected in a complicated procedure, the Senate of the 'transitional period' will be selected in a different manner especially reliable from the point of view of the powers-that-be. According to sect. 269 the 250-member 'transitional Senate' will be composed from three sources. Two of them lead directly to the NCPO selecting the Senators from two lists which are each prepared by a body commissioned with this task. The first is a special Selection Committee for Senators to be appointed by the NCPO, the second the Election Commission. The third and smallest group of Senators comprises six ex-officio members, basically core members of the NCPO or of their closer circle. These are: the Commander in Chief of the Armed forces, the three branch commanders of the army, navy and air force, the Commissioner General of the Royal Thai Police and the Permanent Secretary of the Ministry of Defense. Most important among these three sources is the Selection Committee of Senators (sect. 269 (5)) that is responsible for preparing the selection of 194 of the 250 Senators. It consists of "nine to twelve" NCPO-selected members with a very broad qualification ("knowledge and experience in different fields and political impartiality") and chooses not more than *four hundred* names to be presented to the NCPO which selects 194 persons from this list to be appointed as Senator.

The remaining fifty Senators will be selected by the NCPO from another list of 50 candidates and 50 reserve candidates which is to be submitted by the Election Commission (EC).

Based on this mechanism the composition of the Senate will remain reliably under control of the NCPO as one of its last tasks. But how does this Senate fit with the constructive imperative to enable a strong government in difficult times within the frame of a parliamentary system despite a manifest trend of weakening electoral democracy? There it comes to the function of the 'transitional Senate'.

During the first five years after the first national elections[30] any Prime Minister will be designated by the National Assembly consisting of 750 members, 500 from the House of Representatives and 250 Senators. This electoral act will require "more than one-half of the total number of the existing members of the House" (sect. 159). Consequently, these are 376 votes out of 750. To assess the chances for the power-that-be to ensure a favored government during the first five years from the first national election some simplified model calculations might be worked through. Two marginal conditions shall be assumed so far. Firstly it shall be assumed that the 250 Senators will vote (almost) unanimously and thus most probably as the de facto largest 'party' in the National Assembly representing the NCPO. Secondly it is assumed that the currently two biggest parties, the *Thaksin*-loyal Pheu Thai Party (PTP) and the oppositional Democrat Party (DP), will be inclined to have greater difficulties to gain seats under the newly adopted mixed member apportionment system (MMA) than before while middle-sized parties will probably be inclined to be favored by it. How are then the chances of the NCPO to gain enough votes in the National Assembly notwithstanding the political advantages it enjoys by defining the rules of the game and having neutralized party politics almost completely since the 2014 coup?

As the NCPO commands with its 'Senate-party' not less than 33% of the total votes of the National Assembly in the present model calculation it would need the support of only 126 votes from the 500 members of the House of Representatives. These would be equivalent with 25% of the elected Members of Parliament. In other words: With its

29 See *The Nation*, September 2, 2016.

30 Precisely the second transitional regime will be set in force as follows: The two selection list for Senators shall be presented to the NCPO latest fifteen days before the national election (sect. 269) whereas the NCPO shall have selected all Senators within three days after the announcement of the election results (sect. 269 (5)) to submit them to the King. With their appointment by the King the Senate is constituted. This is heralding the start of the second five-year transitional regime.

33% 'safe' votes the NCPO would need only an additional 17% of the total votes of the 750-member National Assembly equivalent to the mentioned 25% of its elected members.

Before this model's assessment shall be further explored, a frequent lack of precision in perceiving the constitutionally set frame of the prime ministerial election shall be addressed. It seems to be based on the confusion of two subsequently possible modes of forming the government. The first one is the above mentioned process according to sect. 159. Here, the candidate is elected from the lists to be previously submitted by the political parties to the EC. If no such listed and announced candidate is able to muster enough votes though, sect. 272 opens a second, subsequent channel with stricter requirements pertaining to the necessary quorum. Then, not less than one-half of the total number of the existing members of the House of Representatives can waive the party candidate lists and initiate a joint session of the National Assembly to elect a Prime Minister who has not previously be announced as a candidate with at least two thirds of the number of the existing members of both Houses.

What seems to be frequently mixed up are the involvement of Senate in the election of the Prime Minister based on the second referendum question and the second way to elect the Prime Minister according to the original 'Transitional Constitution' in the case that no listed and previously announced candidate would be elected. This sometimes leads to the impression that only the second channel to elect the Prime Minister would allow a non-MP to become Prime Minister and that a two-thirds majority would necessarily be required then. This is wrong. A non-MP can be elected already according to sect. 159, 160 with 51% of the votes and a two-thirds majority is only required if the respective candidate is not listed by a political party and announced by the EC prior to the election.

Prime Minister Election
Required majorities:

376 out of **750** votes of National Assembly
(consisting of **250** Senate votes + **500** House of Repr. Votes)

250 Senate votes
= 33,3 % of total votes of National Assembly
+
126 House of Repr. votes
(= **25 %** + 1 *elected* MPs = **16,8 %** of total votes of National Assembly)

↓

Election of Prime Minister

Coming back to the formation of the government during the 'transitional period' the primary challenge for the NCPO is thus to gain the support of an additional 17% of the votes of the Assembly, 25 % of its elected members or 126 votes from the 500 members of the House of Representatives respectively. The PTP which will most likely not be able to attract any single Senatorial vote would need then 376 votes from among the House of Representatives to elect its candidate 75% of the votes of the elected representatives. Back to the question how a government could be formed based on the biggest 'party' in the National Assembly, the Senate, the further conditions are the following. As already announced by NCPO-loyal actors there could and probably will be one or even more new political parties loyal to the NCPO. This pro-military or pro-NCPO party could nominate a candidate close to or a member of the NCPO. This would be the safest way to ensure a NCPO friendly candidacy according to sect. 159. The second challenge is the mobilization of 126 MPs. A NCPO-friendly coalition in the House of Representatives that will command at least the 126 necessary votes could be formed from three sources. This could firstly be the collaboration of two or three existing middle seized parties or significant split-offs of those parties – among them for instance Bhum Jai Thai and Chart Thai Pattana (which might command together between around 50 and 75 seats given the results of the last 2011 election and the probable effects of the new MMA election system). Secondly, it seems not unlikely to expect a split-off of the second biggest party, the DP, to join a NCPO-friendly coalition under the leadership of *Suthep Thaugsuban*. Less probable but not totally unlikely pertaining to this second source is that the whole DP eventually decides to support a NCPO favored Prime Minister. Thirdly, a new pro-military/pro-NCPO party to be expected soon might also gain a significant number of votes itself. After all it would represent the powers-that-be whereas the whole established party system is massively weakened by the long period of NCPO rule without any party participation and any opportunity for the parties to publicly present or even effectively restructure themselves. On the basis of these possibilities it seems absolutely manageable for the NCPO to gain at least the necessary 25% support from among the elected representatives if not even much more.

Two historical constellations might be remembered in this context. Firstly, the second DP government during the 1990s under Prime Minister *Chuan Leekpai* was formed on the basis of a large coalition-government that became possible due to a break-away faction of 12 from its 18 members of parliament (the so called 'Cobra-faction') of the Prachakorn Thai Party. Similarly, the *Abhisit Veijajiva*-lead DP government of 2008 was also formed on the basis of such a break-away faction of an adversary party, this time the successor of *Thaksin's* Thai Rak Thai party. This break-away faction led by *Newin Chidchop* is now forming as Bhum Jai Thai Party, one of the most probable candidates to support a NCPO-friendly government. Secondly, after the 1991 coup d'état of General *Suchinda Krapayoon*, the coup-group formed the Phak Samakkhi Tham or Justice Unite Party which instantaneously became the strongest party in the next year´s election 1992. To form a government in 2018 a NCPO-backed party would not need even roughly to gain the same number of votes as the pro-military party of 1992 did. Yet, given the fact that the first priority of many voters might be to ensure stability in times of a very threatening divisional, transitional and transformative crisis, a significant voter turnout for a military backed party seems not all improbable.

Based on these considerations it is very likely indeed that NCPO-friendly forces will form the next government in one way or another.

At this point it might be considered which of the two constitutionally foreseen ways could be more preferable to be eventually operated to designate a Prime Minister, the one requiring a prior announcement of a candidate on a party list or the subsequent one after having waived the party list. Being largely hypothetical, both ways have their respective pros and cons from the perspective of the powers-that-be. While the second way is 'purer', more legitimate and less assailable, the first one is much safer. Regarding the second scenario after waiving the party lists, for the opposition more than 250 votes would be sufficient to form a blocking minority. Given that alone the PT received 265 in the last election in 2011 and that it is not sure if not a part of the DP which has received 159 votes in these elections would join in blocking an 'outsider' favorable to the powers-that-be, this way seems to be much less attractive than the regular one.

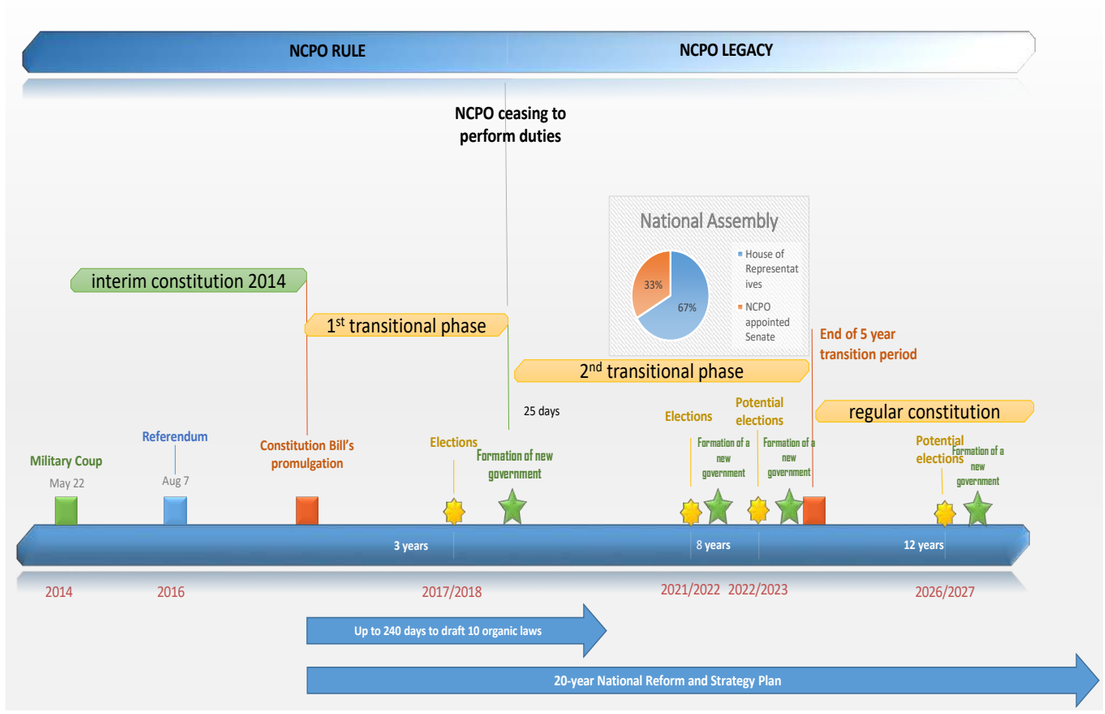
Even if it can be expected that voter turnout in favor of the two big parties will be lower and given the consequences of the new election system and all other factors like a potential 'government bonus' of the NCPO, the past showed that it would be much too risky to rely on this mechanism endangered by 251 votes from 500 whereas 126 from the same 500 would be enough to create a Prime Minister.

To have maintained both 'channels' made however sense because it was first of all not clear if the second referendum question would have been answered positively. Moreover the possibility to discuss two options prior to elections will create a certain room for maneuvering, bargaining and retarding to announce final decisions which might be valuable.

Eventually, all forecasting calculations pertaining to the formation of the government will have to start with the first channel of the party candidate model as the most secure option for the powers-that-be.

This leads back to the basic assumption that the next government will be a favorable one to the NCPO as long as constitutional politics will be determined by the coming constitution. The impact of this fact and the 'Transitional Constitution' that is most probably ensuring it extends however far beyond the formation of the next government. Just to win the next elections could easily turn out not to be enough to prevent a turn back to pro-Thaksin forces like it happened with the 2011 elections leading to an interruption of the NCPO´s reformist agenda at a critical juncture. Importantly, however, the legislature period covers only four years while the 'transitional Senate' will be involved in making the government for five years with the first election. An interesting scenario had be brought up in this respect by *Meechai Ruchupan*, the chairman of the Constitution Drafting Commission who noted that difficulties in operating the first channel in creating a Prime Minister based on the party list would naturally prolong the administration of the NCPO. Interestingly, he immediately clarified that the new government's term in office would begin with the election day: "If the new government can be formed two years after the election, they will serve for the remaining two years only [of a four year term]."[31] The suggestion of such a handling of any substantial delay in forming the government underlines how important it is that the Senate is involved in the formation of more than only one government. In the ideal case, the Senate would form a second – or even third – government to the latest possible point before the end of the 'transitional' constitutional regime. Several scenarios are possible so far. Notable, however, since 1946 the average lifespan of elected, parliamentary endorsed Thai administrations has been approximately 1.8 years.[32] Before *Thaksin* not one single elected government in modern Thai history has survived a full legislative period. This given and supported by the possible volatility of constitutional politics ahead it would hardly surprise if not only the minimum two but even three governments will be formed during the first five years after the first national elections. In any case, it will be possible for the 'transitional Senate' to co-create its last government as lately as necessary. Consequently, the last government formed under these conditions could last up to almost four years under the subsequent 'Regular Constitution'. This would amount to almost nine years of a NCPO-favorable rule *after* the first election under the new Constitution which might be expected earliest for the end of 2017[33]. To these nine years another at least three and a half years under the rule of the NCPO have to be added. After the end of this period of a round dozen of years the next government would still have to operate in the frame of a constitutional setting that it could hardly change through constitutional amendment while it would be bound to the tightly safeguarded 20-year National Reform and Strategy Plan.

Even if this is only one scenario among possible others and, as most scenarios, gets less probable the further it projects in the future, it is not an unlikely one at all. As long as the constitutional order serving as its basic point of reference is intact it is even the most probable among the foreseeable ones. To comprehend this scenario is however much less



31 *The Nation*, August 23, 2016, quoting Meechai Ruchupan.

32 For the calculation the administrations of *Pridi Banomyong*, *Thawan Thamrongnawasawat*, *Khuang Aphaiwong*, *Plaek Phibunsongkhram*, *Thanom Kittikachorn*, *Seni Pramoj*, *Kukrit Pramoj*, *Seni Pramoj*, *Kriangsak Chomanan*, *Prem Tinsulanonda*, *Chatichai Choonhavan*, *Suchinda Kraprayoon*, *Chuan Leekpai*, *Banharn Silpa-archa*, *Chavalit Yongchaiyudh*, *Chuan Leekpai*, *Thaksin Shinatwatra*, *Samak Sundaravej*, *Somchai Wongsawat*, *Abhisit Vejjajiva*, and *Yingluck Shinawatra* have been taken into account.

33 *The Nation*, August 10, 2016.

interesting in terms of forecast but to understand the nature and spin of the present constitutional momentum. In this sense, represents an at least plausible calculus that might further exemplify an often underrated constructive capability of the drafters and the determination of their stakeholders to put the national ride back on track in order to prevent what they perceive as a descent to the hell of national destruction otherwise. The logical consistency of such a calculus would be striking. Intelligence services active in the business of subversion of target societies during the Cold War have reportedly calculated to be able to subvert the social fabric of a given society within approximately fifteen years, roughly the time required to brainwash the relevant generations.[34] From the point of view of the established yet deeply unsettled fundamental consensus and the corresponding hegemonic understanding of Thai constitutionalism, former Prime Minister *Thaksin* has started to profoundly subvert the Thai society and structure of political power from 2001 onwards with great success. With the uprising of the Redshirt movement and its refusal of cornerstones of the old order amounting to a rampant 'cultural revolution', the initial top-down challenge has indeed gained an increasingly toxic impact. As reflected by the preamble of the Constitution Bill, the 2014-coup brought this accelerating 'subversive' process to a provisionary halt – yet only by temporarily freezing the divisional conflict and its transformative impact. According to the perception of the era 'Thaksin' as one of a pervasive subversion and the logic of counter-subversion it would take around the same time of around 15 years to counter the damage of subversion or corruption of the 'good order' respectively that the country has witnessed from this angle since 2001. Whether such a process, that would involve a long-term 're-education' of the people and the eradication of the 'subversive' elements of thought and practice under the label of 'anti-corruption', would develop undisturbed and successfully remains to be seen. Whereas such a calculus of restating the hegemonic fundamental consensus of the Thai society on the basis of a coup-frozen status quo would make all sense from the perspective of the drafters it remains totally open in how far a deliberate and differentiated calculus of the kind unfolded here has actually guided the drafting of the constitution or not. Anyway, measured against it the result is impressive. What can be acknowledged at present is how thoughtful and creative the drafters have responded to the constructive imperatives they faced.

34 See for former KGB defector Yuri Bezmenov, *Love Letter to America*, Los Angeles: NATA 1984.

E. Scrutinizing Agencies: Constitutional Court and Independent Constitutional Organizations

Concerning the comparatively large number of independent constitutional agencies in Thai constitutionalism mainly exercising oversight and scrutinizing functions, the findings largely correlate with the previous assessments. The fundamental structure of the institutional arrangement remains the same while some changes have been made with respect to the composition and the scope of powers of these organizations.

Most important among them is the Constitutional Court whose institutional 'appearance' has changed moderately. Overall and, defying scholarly expectations about the future role of the Constitutional Court as a kind of constitutional super-body, the Court figures at least not more prominently than it has before. Rather it might even be said that its actual constitutional standing and function have been slightly decreased instead of having been enhanced by the Constitution Bill. Symbolically interesting is already a change of the 'location' of the provisions on the Constitutional Court. They are not any more contained in the chapter on the courts (Chapter X) but allocated to a new Chapter on the Constitutional Court (Chapter XI), whereas all other courts – the ordinary courts, the administrative courts and the military courts – are still regulated together. Moreover, the provisions on the Constitutional Court are not only taken out of the chapter on the courts but are also placed behind it while the 2007 Constitution had placed the Constitutional Court at top of the chapter on the courts. This might be considered as accidental or insignificant but matches some other changes and has to be seen against the notion that constitution drafting in Thailand basically unfolds along established patterns. That expresses the remarkable continuity of Thai constitutionalism despite the large number of subsequent constitutions and the reason why changes of the form raise the question of whether they might reflect a changing perception in substance. Assuming thus that the positioning of the provisions on the Constitutional Court might express a certain notion pertaining to the court's standing and function, the 'message' would be twofold. As the courts of justice are considered as the most dignified constitutional bodies with the Supreme Court of Justice leading the way, the 'outsourcing' of the Constitutional Court is not without any significance an. After all, despite remaining a downright judicial body (sect. 211 (4)), the Constitutional Court is not any more part of the 'purest' branch of power but placed behind it. A consequence of the new arrangement is that the justices of the Constitutional Court are not any more explicitly requested by the Constitution to make a solemn declaration before the King according to sect. 191 and not explicitly entitled any more to adjudicate in the name of the King according to sect. 188. Both regulations have to be understood as the expression of the distinguished authority that the judicial branch enjoys among all state powers and from which the Constitutional Court is now inclined to be excluded as far as the present text of the Constitution Bill is concerned. The symbolically lower rather than higher status of the Constitutional Court in comparison to other courts is explicitly reflected also by sect. 234 on the powers of the NCCC. While only judges of the Constitutional Court are subject to the same scrutiny as elected office holders, the scope of inquiry pertaining to all other judges, those of the ordinary, administrative and military courts, more narrowly defined (sect. 234 (2), (3)). Whereas Constitutional Court justices are subject to inquiry by the NCCC concerning their compliance with the ethical standard according to sect. 219, this is not foreseen for other judges. Likewise, different from all other judges, Constitutional Court justices have to declare their assets and liabilities in the same way as those holding political positions (sect. 234 (4)). New in both cases is not the exclusion of judges from a certain scrutinizing mechanism but the inclusion of Constitutional Court judges. Taken together, these changes leave barely any doubt that the Constitutional Court suffered some loss of prestige.

At the same time, as it is the case for the independent Constitutional Organizations, the requirements pertaining to the qualification of justices are stricter than under the 2007 Constitution. Slightly different is not only the composition of the bench (sect. 200) but also the selection procedure of the justices (sect. 200 and 203). Like under the 2007 Constitution, the bench consists of nine justices among whose five are elected by the Supreme Court and Supreme Administrative Court respectively while the remaining four are selected by a Selection Committee to be composed according sect. 203. All nine justices have to be approved by the Senate according to sect. 204. Three out of the five obligatory career judges are elected by the general meeting of the Supreme Court and two by the general meeting of the Supreme Administrative

Court. Different compared to the 2007 Constitution are the minimum qualifications. Those of the career judges to be elected among themselves (sect. 200) have been raised both in terms of rank (not lower than Chief Judge) and time in this position (not less than three years for the Supreme Court and not less than five for the Supreme Administrative Court). Similar are the required qualifications of the other four candidates to be selected by the Selection Committee defined. From these four Justices to be selected, under the 2007 Constitution two had to be "qualified persons in law with thorough knowledge and expertise of law" and two "in political science, public administration, or other social sciences with thorough knowledge and expertise in administration of State affairs" respectively (sect. 204 (4), (5)). Now, sect. 200 (4), (5) requires only one person to be qualified as a lawyer or political scientist each who have to hold the position of a professor for not less than five years with outstanding academic work. Additionally, two judges have to be selected from among (former) officials, thus senior bureaucrats, holding a position not lower than Director-General or its equivalent for not less than five years (sect. 200 (1) No. 5). By raising the qualification in terms of formal status they also limit the scope of possible candidates. The general notion reflected by the changes which also display a certain notion of bureaucratization might be summarized as an inclination to further close the ranks of those deemed reliable to protect the constitutional order without raising the status of the institution 'Constitutional Court' as such.

A slight inclination of rather weakening than strengthening the Constitutional Court is represented by the reduction of the term in office from nine to seven years in sect. 207 (see sect. 2008 of the 2007 Constitution).[35]

Pertaining to its powers the Constitutional Court retained most yet not all its competencies, especially those that characterize the particular type of specialized constitutional review that has been established in Thailand since 1997.[36] In particular, the Court will remain competent to conduct legal reviews – both ex ante and ex post – (sect. 210 (2)) to decide about problems concerning the powers and duties of constitutional organizations (sect. 210 (3)), to decide about the termination of membership in the legislature or the Council of Ministers (see only sect. 82 (2)) and to intervene in acts aimed at overthrowing the 'democratic regime of government with the King as Head' (sect. 49). Other duties are those to convene a meeting of the joint committee according to sect. 5 – where the president of the Constitutional Court is notably host but not necessarily chairman – and the Court's collaboration in defining the compelling ethical standard for office holders. Here it is significant that an elapsing of the deadline without effect is leading to unusually harsh consequences, namely that the justices – like their involved colleagues – shall vacate office. Concerning the jurisdiction of the court in general it is interesting in comparison to the 2007 Constitution that its powers and duties seem to be inclined to be less pronounced and leaving some space for interpretation. This applies for example to decisions about problems concerning the powers and duties of constitutional organizations which have formerly been limited to 'conflicts' between at least two organizations (see sect. 214 of the 2007 Constitution). The new formulation resembles that of the 1997 Constitution (see sect. 266) which caused some confusion over the question of whether the Court would be competent to decide only in adversarial circumstances or also to clarify the content of powers and duties of constitutional organizations when they had a 'problem' to do so on their own. Another interesting formulation is that pertaining to constitutional complaints, thus the right of the citizens to turn to the Court to seek relief or remedy against right violations. Here the formulation of the relevant sect. 213 is broader and much vaguer than the corresponding sect. 212 of the 2007 Constitution has been. While sect. 212 of the 2007 Constitution was limited to violations in the form of laws, the new sect. 213 provides the right to individual complaints against unspecified "act[s] of violation". In a literal understanding the new section could be interpreted so that complaints are possible also against administrative acts and even court decisions. Such an interpretation seems, however, not to be in line with the intention of the drafters to be derived in systematic interpretation. It would moreover strongly deviate from the traditional function and design of constitutional jurisprudence in Thailand. To interpret sect. 213 literally would especially conflict with the constitutional standing of the other courts and thus be inconsistent with the above described inclination to symbolically rather subordinate the Constitutional Court under them than the contrary. But even without identifying such a tendency, to introduce a constitutional complaint against administrative acts would mean a significant change in terms of inter-branch relations. The implementation of a complaint against court decisions including those of the Supreme Court of Justice would even amount to something outright unconceivable in contemporary Thai constitutionalism. Interestingly in this context the formerly broadly granted concrete constitutional review, the request of a court concerning the question if a law it has to apply is in accordance with the constitution, has been narrowed down. Different from the regulation of the 1997 and 2007 Constitutions the formerly broadly established concrete constitutional review on request of a court (sect. 211 of the 2007 Constitution) appears now reduced to a review only with respect to sect. 5 (sect. 212 of the Constitution Bill).

New also is the introduction of a more rigid quorum for decision making in sect. 211 which requires a majority vote of seven out of the nine justices of the Court in comparison to sect. 216 of the 2007 Constitution that established a chamber system with five judges constituting a chamber competent for hearing and decision making by majority vote. While the Constitutional Court under the 2007 Constitution could thus decide by a minimum of only four out of nine Justices, now a minimum of six out of nine Justices is necessary.

Notwithstanding later changes by the Organic Act on the Constitutional Court, the Court for the meanwhile also lost the power "to demand documents or relevant evidence from any person or summon any person to give statements of fact as well as request the Courts, inquiry officials, a State agency, State enterprise or local government organization to carry out any act for the purpose of its consideration" that it had enjoyed according sect. 213 of the 2007 Constitution.

Whereas the Constitutional Courts remains an important guardian of the constitution it might be said that it is nevertheless inclined to be regarded as a less inevitable guardian of last resort to protect the constitutional basic structure than it has been before. Regarding its overall function in the light of the duties entrusted to the Senate and the Joint Committee of sect. 5 (3), the inclination in direction to a more political rather than predominately legal form of constitutionalism finds another expression so far.

Similar is the trend pertaining to the independent constitutional organizations in Chapter XII of the

35 See for the significance of the term in office of the Justices Jiunn-rong Yeh, "Politicization of Constitutional Courts in Asia: Institutional Features, Contexts and Legitimacy," in: *Constitutional Jurisprudence: Functions, Impact, and Challenges*, Baden-Baden: Nomos 2016, pp. 216 ff.

36 See for the jurisdiction of the Constitutional Court under the 2007 Constitution Andrew Harding and Peter Leyland, above fn. 28, pp. 164 ff.

Constitution Bill namely, the Election Commission (EC) according to sect. 222-227., the Ombudsmen according to sect. 228-231, the National Counter Corruption Commission (NCCC) according to sect. 232-237, the State Audit Commission (sect. 238-245), and the National Human Rights Commission (NHRC) according to sect. 246 f.). New is a general chapter on these independent constitutional bodies which stipulates the basic qualifications, (216), vacation of office (218), and selection of the commissioners (217) as well as the institutional autonomy of the commissions (with exception of the State Audit Commission) in terms of infrastructure and budget (sect. 220). Newly introduced is a principle of mutual assistance and collaboration between the independent constitutional organizations (sect. 221). Generally, the independent organizations remain the same as under the 2007 Constitution while they are inclined to have rather lost some bite than that they have gained more in terms of powers and duties – notwithstanding their above described functions with respect to political office holders. At the same time the required general qualifications for all Commissioners are relatively higher than before. That affects the required minimum age, the rank and the time to have held the rank for candidates. Overall, the new selection criteria support the trend to favor a more bureaucratic notion in staffing the various constitutional bodies. While the specific qualification criteria and the number of Commissioners vary for the different commissions, are all Commissioner selected by the same procedure with the exception of the NHRC (sect. 217). This procedure follows basically those for the Justices of the Constitutional Court according to sect. 203 (sect. 217). The trend pertaining to the required qualifications – both in general and in specific terms – corresponds likewise to those described for the Constitutional Court. Different from the 2007 Constitution, Commissioners have for instance not to be any more at least forty but forty-five years old (sect. 217) and are inclined to have not only a specified rank now but this also for a specified minimum time. Bureaucrats for example have to hold or have held the rank of at least a Director-General or equivalent for not less than five years (see sect. 228 or 232 for instance) and judges those of not lower than Chief Judge for not less than five years (see sect. 222 or 232). In the same, further delineating the independent commissions from electoral politics, former Ministers are no longer listed as eligible candidates to become Commissioners as in the previous constitution. On the other side representatives of NGOs are also no longer listed as eligible candidates as they were in the 2007 Constitution.

F. Rights

Lastly, some remarks shall be made on the matter of rights in form of the new Constitution's relevant provisions. Insofar the trend is more conservative and restrictive compared to the 2007 Constitution and especially the 2015 draft. The latter even introduced the concept of universalistic judicially enforceable human rights while the Constitution Bill returned to the established model to refer only to the rights and duties of the Thai people. New however is the introduction of duties of the state in Chapter V which formulates more than only a catalogue of right based policy declarations as it also grants the individual right to "follow up and accelerate" the corresponding state performance and even to file complaints (sect. 51).

Nevertheless, Chapter III on the rights and liberties of the Thai people is *technically* one of the less convincing ones, starting with its inner structure which seems quite arbitrary pertaining to the arrangement and sequence of the regulated liberties. Decisive however, are not so much the single liberties but their limits and especially the constitutionally imposed restrictions on such limitations. Pertaining to the right limitations – basically necessary to ensure a practically workable rights regime – the Constitution Bill combines two techniques. In sect. 25 (1) and (2) it regulates general limits to the exercise of rights and liberties. They are complemented by a number of specially regulated limits of particular rights. According to the general rule, rights are limited by national security, public order, good morals of the people and the rights and liberties of the others. Another general limitation is effectively formulated by the civic duty under Chapter IV, sect. 50 (7), to respect and refrain from violating the rights and liberties of other persons and to not commit any act that may cause disharmony or hatred in society. Based on this general regime of rights restrictions virtually almost every behavior is subjected to potential limitations. Yet, more important than the limitations of rights are the restrictions imposed on the exercise of state power to limit rights and liberties. Here, sect. 26 stipulates that limitations imposed by law shall be regulated by a general law, not contravene the rule of law and human dignity[37], be reasonable, and specify the purpose and necessity of the limitation. This somehow resembles most elements of the principle of proportionality even if it does not amount to a complete version of this most central constitutional principle limiting the state's ability to restrict rights.[38] As in the 2007 Constitution it is not expressively demanded to balance the involved interests in form of a proportionality test in the narrow sense (see however, sect. 32 of the 2015 draft). A change pertaining to the restrictions on the state's ability to limit rights and liberties in comparison with the 2007 Constitution is the omission of the principle that right-limitations shall not affect the substance core of right or liberty. The dominating notion concerning the rights regime in the Constitution Bill is arguably well reflected by the regulation of the institution which is among those most specifically charged with the protection of fundamental rights, the National Human Rights Commission (NHCR). Among the independent constitutional state organizations it remains the most toothless, those that sustained the biggest loss of powers compared with the 2007 Constitution. Its members have to fulfill the most unspecified qualifications of all organizations in Chapter XII on the independent constitutional organizations while its duties in terms of right protection are rather limited to recommendations (see sect. 247). Telling are two new duties expressing a notion to scale the commissions human right related mission back. This is firstly the duty to "clarify and report accurately with respect to incorrect or unfair reports on the human right situation in Thailand" (sect. 247 (1) Nr. 6). As much as it is justified for any government to voice opposition to human right reports deemed arbitrary or wrong, as much might it weaken an anyway rather weakly designed human rights commission to charge it with this additional task as well. To determinately observe its main task to defend human rights having been violated by state agencies any human right commission has to cooperate with the civil society and international organizations. In doing so, it will anyway clarify if it is of the opinion that these partners get things wrong. But to charge it with the duty to "clarify and report" charges the commission with the duty to police its partners encouraging a spirit that is easily inclined to contravene those

37 Human dignity is regulated ambiguously in the right chapter. While it serves a restriction to right limitations in sect. 26 it is formulated as a right in sect. 32. To consider human dignity as restriction of right limitations is unusual but has for instance been discussed in German scholarly doctrine where a minority opinion holds that the protection of human dignity might be understood as a restriction of the state's power to limit rights rather than a right itself. See Philipp Kunig, "Zum Dogma der unantastbaren Menschenwürde", in: *Das Dogma der Unantastbarkeit*, Tübingen: Mohr Siebeck, 2010, p. 122.

38 See Moshe Cohen-Eliya and Iddo Porat, *Proportionality and Constitutional Culture*, Cambridge: Cambridge University Press, 2013, p. 153, calling it even the "lingua franca" of a universal constitutional culture having migrated immensely successful from German constitutional law all over the world.

required to robustly defend human rights. Therefore it is not the additional duty that might itself be problematic but rather charging the NRHC with it. Similar is the effect of another new provision. Most notably sect. 247 (2) orders the NHRC to perform its duties with due regard to the well-being of the Thai people and the common interest of the country. As much as these overriding goods should be observed by everyone, public and private actors as well, as much is it telling to specifically draw on them for the purpose of creating a reservation for the human right commission. In the related discourses, goods like the well-being of the people and the common interest of the country are not meant as expressing the spirit of rights but another even more important spirit serving the common good rather than individual rights. From this perspective, sect. 247 (2) is understood here as stressing awareness for the specific duty of the human rights commission to put the interest of human rights under the classical caveat of the reason of state and the priority of the community over individual rights interests. Again, it is one thing here to express such a notion from the side of the state in general and another to define the duties just of the human rights commission by the obligatory ordered recourse to them.

All in all it might be said so far that the most favorable season for the exercise of fundamental rights in Thai constitutional politics has been that from 2006 to 2014 when the exercise of civil rights could be pitted against the vagaries of an unleashed electoral democracy as manifested in the numerous civic mass movements protesting against *Thaksin*-loyal governments. The Constitution Bill reflects another reality and other priorities with respect to the public space in the frame of a constitutional order which attempts nothing else so much than providing stability in the sense of an inherently conservative understanding of constitutionalism.

G. Final Remarks

This article attempts to present a first fairly rough overview over the constitutional order to be established on the basis of the Constitutional Bill which is not yet in force. This new Constitution reflects the circumstances of its creation in almost every respect and will be dependent on the further development of these circumstances. Whether the Constitution to come will be able to influence these developments in favor of its own endurance remains to be seen. In terms of content the Constitution Bill remains in line with established Thai constitutionalism wherever possible and reacts to the changing marginal conditions in a more conservative way than the 2015 draft where it comes to the question of public participation. With the current constitutional project, the long established trend to contain the 'vagaries' of electoral politics reaches a new peak where it comes to hold individual office holders responsible while the former shotgun-approach towards political parties and their executive members has been given up. Concerning the 'Guardians of the Constitution' a shift might be identified to a more political rather than legal mode of decision making reflecting a careful rebalancing of functions relieving the Constitutional Court from being commissioned with the role as the guardian of last resort as being reflected by sect. 5 (3). More important than this new ad-hoc 'rescue function' of last resort, the drafters had to safeguard the continuity of 'normal' government after the next elections. For this purpose, the 'Transitional Constitution' provides a carefully calibrated mechanism in the form of the involvement of the Senate in the creation of the government during the five years following the first elections. Notwithstanding possible shifts within the factual fundaments of constitutional politics, the draft represents a sincere attempt to define a normative solution for future government based on the decision of an exclusive approach to handle the lingering divisional crisis. Especially in its most important parts it responds technically consistently and with a remarkable craft to the imperatives the drafters faced.

When Politics and Law Collide: The South China Sea in the Post-Hague 'New Normal'

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On July 12, 2016 in a courtroom in The Hague, the Republic of Philippines won a famous victory against the People's Republic of China in a South China Sea maritime rights-related arbitration case that it had initiated three-and-a-half years earlier.

The arbitral tribunal issued two weighty rulings in favor of the Philippines. First, it ruled that no China-administered or claimed land feature in the northern sector (Scarborough Shoal) or the southern sector (Spratlys) of the South China Sea is capable of sustaining human habitation or economic life of their own. As such, none meets the definition of a "fully-entitled island" within the meaning of Article 121 of the Law of the Sea Convention. The implication of this ruling was that none of these China-claimed features in the South China Sea were entitled to an exclusive economic zone (EEZ) or continental shelf – in turn, enabling the court to find jurisdiction to rule - unfavorably - against China on a number of other intrinsically-linked complaints submitted to the court by Manila. Second, the tribunal ruled that China's claim to 'historic rights' within the Nine-Dash Line was contrary to the Law of the Sea Convention and without lawful effect because it exceeded the geographic and substantive limits of China's maritime entitlements under the Convention. Further, it declared that following the coming-into-force of the Convention in 1994, any *exclusive* 'historic rights' that might have existed in waters that are not appurtenant to a mainland coast had been superseded.

The tribunal also issued a host of lesser rulings in favor of the Philippines. First, it observed that Scarborough Shoal had been a traditional fishing ground for Filipino artisanal fishermen and ruled that despite China being the 'coastal state' and administrator of the Shoal, these Filipino traditional fishing rights had been preserved in the Shoal's territorial sea by the Law of the Sea Convention. Second, that Chinese fishermen and Chinese flagged vessels had engaged in destructive activities that had harmed the marine environment; equally, that China's land reclamation activities – while not illegal per se, except in the case of Mischief Reef - had damaged the coral reef ecosystem in the Spratlys and was in violation of its international environmental treaty obligations. Finally, the tribunal ruled that China's law enforcement vessels had failed to observe, and in fact repeatedly violated, many international navigation-related regulations during the course of its enforcement operations in the vicinity of Scarborough Shoal.

China did win one small though hollow ruling in its favor. The tribunal observed that it was not in a position to rule whether China's enforcement activi-

ties in the vicinity of the Second Thomas Shoal had violated the Philippines' sovereign rights and freedoms in the latter's EEZ.

With the tribunal having rendered its award on a host of maritime entitlement issues, it would be desirable to say that a contentious chapter in the law and politics of the South China Sea has been brought to a close and that the next step should be to discuss and agree upon mechanisms to peacefully resolve the underlying territorial disputes in this semi-enclosed sea. It would also be a highly-optimistic statement to make. Far from having closed the chapter on these maritime entitlement disputes – let alone open a path to resolving the underlying territorial sovereignty quarrels, the ruling has only established a 'new normal' that will serve as a new departure point for diplomats and naval strategists in the years ahead. Worse, in laying out some highly controversial – if not outright dubious - legal reasoning within certain limited but critically-important sections of the award, the tribunal, portentously, might even have set-back the cause of both regional political comity and international maritime law in the South China Sea.

Playing Fast and Loose with Precedent and Law

International jurists, it was long assumed, are by nature predisposed towards win-win outcomes. While great power competition in the international system tends to gravitate towards zero-sum outcomes due to the relative imbalance in power capabilities and the absence of a central political authority, jurists prefer to hew in their reading of the law to constructive, middle-of-the-road solutions. Especially in a case involving a (non-participating) major power in a highly-politicized environment with important geo-political ramifications, it was assumed that the jurists would opt for discretion, fair-play and moderation in their award.

These assumptions were irreparably shattered on July 12 with a judgment that was as harsh as it was audacious.

The ruling was harsh because the arbitrators enjoyed ample latitude to carve out a constructive, mid-path interpretation of a critically important but ill-defined provision of maritime law (Article 121 – Regime of Islands), yet chose to indulge in a tortuous train of legal thought that lacked basis in case law as well as in the reading of the letter of the law and produced a zero-sum outcome that overwhelmingly favored Manila. In the course of throwing decades of jurisprudential caution out of the window, the tribunal redefined the legal meaning of a 'rock' from a land feature "which cannot sustain human habitation or economic life of their own" to one "which *hasn't sustained a settled community of inhabitants* or economic life of their own." Having substantially transformed this meaning, the tribunal proceeded to strike down the capacity of Itu Aba and every other China-claimed high-tide feature in the Spratlys group to generate an EEZ or continental shelf, and in so doing thereby found jurisdiction to rule on a number of intrinsically-linked submissions against China.

Yet very little in the tribunal's re-interpretation of Article 121 bears resemblance to the letter or spirit of the provision. The provision lays down no requirement – implicit or other - that the 'human' presence referenced be an exclusively civilian one; that the 'habitation' on a feature be a "non-transient one who have chosen to stay and reside"; that the feature must furnish an abstract "proper standard" of lifestyle; or that the feature's entitlement is exclusively intended for a beneficial indigenous population. And while the object and purpose of Article 121 was indeed intended to not enable a tiny feature to generate a disproportionately large entitlement to maritime space, there is utterly nothing in the official record of the Law of the Sea negotiations to suggest that a "stable group or community" standard was envisioned to qualify a feature as a full-entitled island that can 'sustain human habitation'.

Indeed, the rulings foray into the language of equitability and delimitation (to which the question of a feature's entitlement is intrinsically-linked) leaves the distinct impression that the tribunal methodically tailored the definitional goalposts to circumvent China's legal opt-out from maritime delimitation-linked cases to deliberately orchestrate the downgrading Itu Aba to a 'rock' – and thereby find jurisdiction to rule, unfavorably, on a host of submissions against China.

The ruling was audacious because the arbitrators dismissed an earlier ruling in sea law (on how 'historic rights' obtain in maritime spaces) with a breeziness that was inversely proportional to its tortuous reasoning on the Article 121 'island/rock' issue. At minimum, the panelists bore an obligation to lay out a reasoned basis for overturning precedent – and a landmark one at that. Instead, they resorted to a superficial explanation that was lifted almost word-for-word from the Philippines' March 2014 memorial to the tribunal.

The arbitral tribunal was right to observe that China cannot enjoy any form of *exclusive* 'historic rights' in the South China Sea that is not appurtenant to its mainland coast. Especially in waters that are within its nine-dash line but since the entry into force of the LOS Convention have become part of the exclusive zones of its littoral neighbors, such exclusive rights to fish or conduct minerals-related activity have been decisively superseded. Equally, the tribunal was wrong to observe that China cannot enjoy a non-exclusive 'historic right' of access insofar as traditional fishing is concerned in waters that are within its nine-dash line but have since become part of the EEZ of its littoral neighbors in the South China Sea. Chinese nationals, traditional fishermen in particular, can indeed enjoy such a right.

In a landmark ruling in the late-1990s (*Eritrea v. Yemen*), the International Court of Justice (ICJ) had ruled that there are "important elements capable of creating 'historic rights' [in the semi-enclosed Red Sea] which accrued … as a sort of *servitude internationale* (or easement) falling short of territorial sovereignty." So long as the "special factors [that went into the crystallization of this right of access for traditional fishermen] constituted a local tradition, [it was] entitled to the respect and protection of the law and was not qualified by the maritime zones specified under UNCLOS." *Mauritius v. United Kingdom* (2015) reconfirmed that "states may possess particular rights by virtue of local custom" which operate "for all intents and purposes equivalently" in each of the maritime zones created by the Convention, and that the coastal state bears an obligation to pay "due regard" to these user states (traditional fishing) rights and exercise its Convention-based rights "subject to these other rules of international law."

On July 12, the tribunal cherry-picked the arguments within that were expedient, disregarded those that could have validated a non-exclusive Chinese traditional fishing right of access within the nine-dash line, and was remiss in laying out a reasoned basis for its casual ignoring – and overturning – of a landmark precedent.

It agreed that Manila was entitled to reach beyond the text of the convention to enjoy a non-exclusively exercised traditional fishing right in the territorial sea of the Scarborough Shoal, which was part of the body of general international law preserved by UNCLOS. It disregarded prior injunctions that "[t]he traditional fishing regime is not limited to the territorial waters of specified [mid-sea] islands" but also extends for all intents and purposes equivalently to each of the maritime zones created by the Convention. Obliged to explain its inconsistent view why traditional Chinese fishing practices which it implicitly admitted satisfies the threshold of being

considered a local tradition in a semi-enclosed sea should not enjoy a limited right of access within a neighboring foreign EEZ, the tribunal could only muster that the ICJ was able to reach this conclusion in *Eritrea/Yemen* "because it was permitted to apply *[pertinent] factors* other than the Convention itself under the applicable law provisions of the parties' arbitration agreement" and was thereby "empowered to go beyond the law on traditional fishing as it would exist under the Convention."

A procedural rule, effectively then, served as the basis for the tribunal to strip a long-standing historical practice that had acquired the force of law and crystallized into a privately-held 'historic right' – even though the panelists themselves had remarked earlier in the award that such privately-acquired rights do not even cease on a change of sovereignty. China's traditional fishing practices materially satisfy the key "pertinent factors" listed too in the applicable law provisions of the *Eritrea/Yemen* arbitration agreement. Further, by extinguishing a landmark ruling without so much as an explanatory footnote (in an award otherwise crammed with 1,498 footnotes), the tribunal also tore down an economically useful facility – international servitude/ easement - that both the ICJ and its predecessor, the Permanent Court of International Justice (PCIJ), had recognized and roundly appreciated in the course of judgments that span the 20th century.

When the dust finally settles on this controversial award, the disturbing irony of July 12th will be this: where there was no basis in case law (on the Article 121 question), the tribunal found a means to manufacture one, despite precedent and opportunity to by-and-large discreetly side-step this question; where there was basis in case law (on the 'historic rights' question), the tribunal struck it down without so much as an explanation of its basis for doing so. Further, in the course of its ruling, the arbitrators also ripped apart the deliberate ambiguity that has at times helpfully spurred the search for win–win solutions to the Asia-Pacific region's overlapping challenges at its peripheries. Yet another Asian frontier has now been transformed, to quote Lord Curzon, into a 'razor's edge on which hang suspended the modern issues of war or peace'.

So where to from here for China and ASEAN

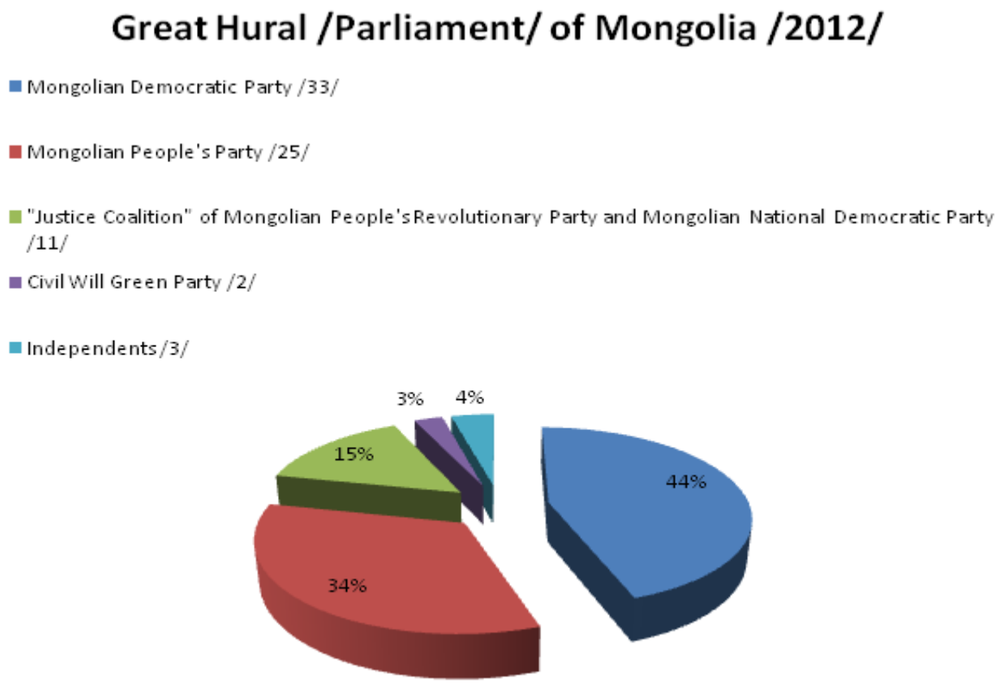
On July 12, 2016, international jurists in The Hague misused an important opportunity to set the law and politics of the South China Sea on a qualitatively more polished path than the region's diplomats have, hitherto, been able to produce. Had they ruled Itu Aba to be a fully-entitled island, it could have furnished a basis for Sino-Philippine oil and gas joint development in the overlapping area of entitlement. Now, with no geographic overlap to contend with and a *de facto* delimitation of the China–Philippines maritime boundary furnished, the principle of 'shelving differences and seeking joint development' has been rendered hollow and the raison d'être that sustains the envisaged Code of Conduct undercut. Equally, had the tribunal re-confirmed that a local custom-based traditional fishing right was preserved across *all* the exclusive maritime zones in this semi-enclosed sea, it could have furnished an incentive for the nine-dash line to be thrown open on equal terms as a common fishing ground for all artisanal fishermen of *every* littoral state that borders this semi-enclosed sea.

China and ASEAN's leaders on the other hand have demonstrated commendable self-restraint in the wake of the award. They must now try to expedite progress on the long-discussed Code of Conduct as well as on establishing the requisite hotlines between their foreign ministries, as they discussed at their recent deliberations in Vientiane in late July. Despite the award, they should also explore the possibility of undertaking cooperative activities in the South China Sea, such as navigation safety, search and rescue, environmental protection and combating transnational crimes at sea. Foremost, going forward, as China and ASEAN continue to re-group after the award and gingerly mold the 'new normal' in the South China Sea to their mutual benefit, they must form a consensus on one important point: as best possible, they must throw their weight behind comprehensive and cooperative management frameworks in this semi-enclosed sea. Even as they legally pay due respect to the award, they must politically rise above it and frame overarching collective functional mechanisms that foster good order at sea and secure peace and stability in the wider region.

Election 2016: A Call for Economic Security

Anthony V. Rinna, Russia and Eurasia Analyst, Sino-NK research group, South Korea

In the event of the Mongolian People's Party's (MPP) landslide victory this past summer, the people of Mongolia have issued the left-leaning MPP a mandate for Mongolian economic security. Barry Buzan of the London School of Economics, in an attempt to provide a framework for understanding what exactly constitutes a security issue offers several categories for understanding security threats, including economic, political and societal issues. In analyzing both the issues leading up to the election as well as the major tasks with which the returning



MPP has been charged, Mongolia's economic security situation presents a two-fold challenge. On the one hand, the Mongolian government must provide for the needs of its citizens' economic security, while at the same time continue to foster a democratic culture that will, in turn, see to the promotion of Mongolia's economic well-being.

Policy Changes: Investor Friendliness and Economic Sovereignty

With 85% of seats in the State Great Khural, the Mongolian People's Party is set to enjoy comparatively greater political power than during the last Khural. Source: The Great State Khural of Mongolia.

The MPP's return to power has raised hopes that, after years of political risk to foreign businesspeople and corporations operating in Mongolia, a larger measure of stability will return to the country's economic sector. As a result of the election, many of the resource nationalist-populists who had sat in the Great Khural had been ousted, and the MPP's undisputed majority removed the need for any sort of political compromise or coalition formation with other parties. The MPP's overwhelming majority in the Khural has raised hopes not only of greater political stability and efficiency in parliamentary politics, but also that the MPP will be more effective in general in implementing needed reforms across the country. External observers such as Adrienne Lui have noted the MPP's superior track record in organization and leadership versus the inconsistencies of the DP government, which created an unfriendly business environment for external investors.

Members of the newest session of the Great Khural. Source: Wikipedia Mongolian

One of the major tasks at hand is to alter or reverse policies that have made resource-rich Mongolia a risky and unfriendly place for foreign companies and investors to operate. Policies implemented under the previous government were designed to preserve Mongolia's economic sovereignty as well as control over its coveted natural resources. While Mongolia has long felt an overwhelming economic influence from its neighbors, especially China, in recent years the overall amount of external investment in Mongolia has decreased. As Daisuke Harashima, an economic analyst with the Nikkei Asian Review asserts, measures that were initially designed to prevent China from taking excessive control of the Mongolian economy have instead caused investors from not only China but from the European Union and Japan to shy away from investing in the country. The decline in foreign investment in Mongolia's natural resource production has prompted the country once again to reconsider its policies on government ownership of national natural resources, according to Charles Krusekopf.

The MPP's task therefore is to The implement policies that protect Mongolia's economic sovereignty while fostering a larger amount of FDI. Nevertheless, the matter is more complicated than a simple reversal of previous policy. The main issue at hand is how Mongolia can enjoy the benefits of external investment in its natural resources without ceding its economic sovereignty or control of its assets to foreign powers. Mongolia, therefore, would not likely be willing to grant foreign ownership of some of its major natural resource firms to foreign actors, but rather would prefer to take development loans from abroad. Diversifying Mongolia's economic partners, however, is obviously much easier said than done. Based on Mongolia's geographic realities, the country's economy is inextricably linked to its policies toward China and Russia. As Alicia Campi argues, the MPP has traditionally leaned more toward Russia, and thus will likely seek more active Russian participation in the China-Mongolia-Russia trilateral relationship. Russia has already benefited Mongolia's economic situation by canceling Mongolia's $174 million debt to Russia, which had hindered Mongolia-Russia cooperation on the energy production market.

On this account, Mongolia can perhaps combine necessary economic reforms with its largely successful "third neighbor" policy to diversify its economic partners, and thus bring in larger amounts of investment while not falling overly beholden to any one external partner. The Mongolian government has already begun to woo international investors once again by developing trade partnerships with other countries. Japanese Prime Minister Abe Shinzo, met with both Mongolian President T. Elbegdorj as well as the new Prime Minister J. Erdenebat at the ASEM summit in Ulan Bataar. During his visit to Mongolia, Abe emphasized the continued importance of the Japan-Mongolia relationship and asserted that the foundation of those ties "remain unchanged". Prime Minister Abe touted the shared values between the two countries, and vowed to cooperate with the new government. The statement comes just after the implementation of a free trade agreement (the first such arrangement for Mongolia) between Japan and Mongolia, whereby tariffs and duties will be either abolished or phased out over the course of a decade. Given the comparatively small volume of trade between the two countries, analysts project that the impact of the FTA will be relatively modest. Mongolia is also discussing the implementation of a similar trade agreement with the Republic of Korea.

Mongolian Democracy and The Nation's Economic Health

Mongolians cast their vote in the 2016 parliamentary elections. Yet with popular discontent toward politicans rising, the future of Mongolian democracy faces fresh challenges. Source: The Diplomat.

While issues directly related to the economy such as resource ownership and investment policy have been front-and-center in this year's election, an issue separate from but related to the economy is the viability of Mongolian democracy. Mongolian democratic institutions' ability to function properly has implications for the nation's economic security in addition to aforementioned government policy issues. Many members of the Mongolian electorate have grown weary of a system widely seen as corrupt. Many residents cite a "lack of responsibility" in Mongolian society as fueling the rampant corruption in the country. Comments from citizens on the problem of corruption frequently point to the fact that, in a country with a relatively small population, nepotism and the use of connections are widespread. If someone commits a crime, and even if a punishment is to be enacted, the guilty party is often able to find a connection that can prevent the penalty from being implemented.

Julian Dierkes at the University of British Co-

lumbia has warned both of "democracy fatigue" taking root in Mongolia. Furthermore, with the rise of the MPP, Dierkes warns of the possibility that, after the DP's supposed politicization of tools of government, the MPP may seek revenge against political opponents. A combination of public discontent with democracy as well as institutional malfunctions will not bode well for the future of democracy in the country. In his analysis of the connection between democracy and human security, Todd Landman asserts that the dependence of politicians on their constituents leads to greater accountability and thus necessitates actions designated to protect human security. Furthermore, Landman highlights research indicating that while democracies are not especially proficient at generating economic growth, they are better than other forms of governance for fostering human development. As human development is one of the keys to the sustenance of a well-heeled economy, the preservation and efficient functioning of Mongolian democracy is a key ingredient in Mongolia's economic and financial viability.

Aside from the general viability of Mongolia's democratic institutions and their relation to the country's economic health, one specific aspect of Mongolia's political economy that has suffered in this past election is the rights and role of Mongolian women in their country's political participation. The Asian Forum for Human Rights and Development issued a statement one month prior to the elections calling for all political parties involved to include human rights platforms in their agendas. The statement specifically included a provision calling for the amendment of Mongolian electoral laws to ensure that women occupied at least 30% of all seats in Parliament. This had actually been on the books in Mongolian electoral law, yet ahead of the 2016 vote, among a number of controversial changes was a decrease in the quota for nominating female MP candidates, from 30% to 20%.

Women's rights and economic empowerment have, in fact, been a key factor in Mongolia's success as a democracy, according to Mongolian MP Oyungerel Tsedevdamba. The large-scale participation of women in Mongolia's economy immediately following the fall of communism- more out of necessity than direct policy shifts aimed specifically to empower women, played a major role in Mongolia's successful implementation of democracy. The active participation of women in the nation's economic life helped the country survive lean economic times, rather than fostering nostalgia for a return to communism.

Moving Forward

For Mongolia, the mandate to provide economic security comprises the maintenance of national economic sovereignty and control of natural resource wealth, the execution of relatively low-risk and investor friendly commercial policies, the satisfaction of the economic needs of Mongolian citizens, and the solidification of Mongolia's democratic institutions. The ability to create an investor-friendly climate that does not sacrifice Mongolia's economic independence will require a balancing act not unlike the country's "third neighbor" foreign policy, whereby relations between China, Russia and third states are maintained in relative equilibrium. Investor-conducive policies will, hopefully, reverse the decline in Mongolia's economic growth and allow citizens to enjoy higher levels of prosperity. At the same time, the Mongolian government must maintain the viability of its democratic apparatus, and must work to combat corruption. In direct relation to the realization of Mongolian good governance, and in a more oblique yet still important relation to economic security, the Mongolian people must not fall subject to the aforementioned risk of "democracy fatigue". The electorate in Mongolia has spoken, and the Mongolian People's Party has its work cut out. Yet while the people of Mongolia have given their new government a formidable task, it is also up to the people of Mongolia to practice patience and understanding as they work to continue building a prosperous Mongolia.

Nepal's quest for stability

Kamal Dev Bhattarai, Journalist, The Kathmandu Post

The constitution of 1990 of Nepal was regarded a good constitutions. But, it failed to institutionalize the nascent democracy in the country. The political instability that started in the early nineties with the eruption of Maoist insurgency and frequent government changes still continues.

In 2007, the Seven Party Alliance and the Maoists decided to overthrow the Monarchy and draft a new constitution through the Constituent Assembly (CA). There was a hope that this political development would lead the country towards stability, but it proved not to be the case. Today, the Monarchy has ceased to govern and three major parties, the Nepali Congress, CPN-UML (Communist Party of Nepal) and CPN (Maoist Centre) are ruling the country on a rotational basis. In the last 26 years, 25 governments were formed which clearly indicates severe instability in the country.

Nine years after signing the peace accord with the rebel Maoist party, Nepal adopted a new constitution on September 20, 2015 with a hope that it would bring much-awaited political stability and economic development. Nepal spent seven years drafting this, holding two Constituent Assembly (CA) elections, spending billions of rupees.

It has been almost one year since the promulgation of the constitution but again, there are no signs of stability in the country. Instead, there are possibilities of further crises and instability in near future if urgent steps are not taken to hold elections as per the constitutional provisions.

The new constitution clearly indicates that the current Parliament will be dissolved on January 22, 2018. This means that within the next 18 months, Nepal will have to conduct three elections- local, provincial and central- to avoid a constitutional crisis - a challenging job for political parties which are always squabbling to ascend to power.

Today, the political situation is exceedingly messy. Frequent government changes are affecting governance and development. The country's GDP is expected to grow only 1.5% for the fiscal year of 2015-2016. Unemployment and corruption are rampant. According to government data, every day 1500 young people fly abroad seeking employment.

The reconstruction of structures damaged by the earthquake in 2015 and rehabilitation of affected people who are living in painful conditions in temporary, makeshift housing, compromising their health, is progressing slowly. The health and education sector has been badly hit and has yet to recover from the catastrophic events in 2015. The roots of all these problems are political. Once the constitution was promulgated, some Madhes-based parties in the southern belt bordering with India protested, saying that the charter excluded their demands.

As they centred their protests along the border and therefore disrupted trade, the supply system of the country was badly affected. There was tacit sup-

port of India in the movement of the Madhes-based parties, who demanded two provinces of the southern belt known as Madhes. India's main interest, for security reasons, is stability in the region.

The border blockade lasted for four months and it badly affected the economy and supply system as two-third of Nepal's trade is with India. In the prolonged Madhes movement, over 50 people died and there was still no sign of compromise between the major parties that backed the current constitutional arrangement and the Madhes-based parties.

Although there is an amendment in the constitution to address the demands of Madhes-based parties, they are saying that it only partially fulfils their demands. According to them, revisiting the demarcation of federal units is their key demand which is yet to be fulfilled even with the amendment.

The CPN-UML Chairman KP Oli-led government, which was backed by the Maoist party, led by Pushpa Kamal Dahal Prachanda failed to make any progress on the demarcation issue.

The problem has been prolonged as the major parties Nepali Congress, CPN-UML and CPN (Maoist Centre) are themselves not clear on the demands of Madhes-based parties.

They could neither ignore the demands of Madhes-based parties, nor could they come up with any blueprint for a solution of the conflict. This is because of their election strategy. None of the three parties is in favour of redrawing the provinces as per the demand of the Madhes-based parties, but they cannot speak about it as they fear losing their votes in Madhes.

Now, there is a new alliance between Nepali Congress and CPN (Maoist Centre) led by Prachanda. The new alliance has promised to address the demands of Madhes-based parties through the constitutional amendment. In return, Madhes-based parties have supported Prachanda for the new prime minister.

The promulgation of the constitution has not only triggered a domestic crisis but also a diplomatic crisis. India, a close neighbour which shares historical, cultural and geographical ties with Nepal, became dissatisfied with the constitution promulgation.

On the day the constitution was promulgated, India did not welcome it, it only noted it. After that, India pressed Nepal to fulfil the demands of the Madhes-based parties and there was tacit support on the border blockade of Madhes-based parties.

The relation between then Prime Minister KP Oli and India soured. After Oli visited India in February this year, the relation between the two countries headed towards normalisation, but in the end, not much progress was made.

Later, Nepal abruptly cancelled President Bidhya Devi Bhandari's visit without prior information to India which soured the relation between the two countries further.

The Oli-led government cancelled the visit, saying that India tried to topple the government in Nepal which is very difficult to verify. Oli is still saying that India is unnecessarily interfering into the domestic affairs of the country.

Oli blamed India for the blockade of the border, while India maintained that Nepal needs to make its constitution inclusive, accommodating the agitating parties. After increasing obstacles in the traditional supply system, Oli looked to China to bring in petroleum products.

The Oli government imported some petroleum products from China but it was not sufficient to fully meet Nepal's demands. Later, Oli signed a Trade and Transit Treaty deal with China, ending India's monopoly in Nepal's supply system. Though it is not possible yet to import sufficiently from China due to the lack of infrastructure, it has been taken as a positive step across the political parties. India, however, believed that the Oli-led government played its China card against India like King Mahendra did in the 1960s.

China however welcomed the promulgation of the new constitution in Nepal and provided assistance during this period. Whilst the relations to India suffered during the KP Oli government, there is now a new government led by Prachanda. There are reports that India has supported the formation of this new government and both, Prachanda and India are keen to improve relations in the days ahead.

Now, Prime Minister Pushpa Kamal Dahal Prachanda has a major challenge of maintaining a balanced relation with two neighbours India and China. As a positive gesture, PM Dahal decided to send Deputy Prime Ministers Bimalendra Nidhi and Krishna Bahadur Mahara to India and China to brief their neighbours about the recent political changes in Nepal.

Both India and China are working to make Dahal's government favourable to them. India, on the one hand, wants to minimize Chinese influence through Dahal's premiership, China, on the other hand, wants to continue its influence in Nepal.

Dahal is under domestic pressure to implement the trade and transit agreement signed with China but he does not want relations with India to deteriorate.In an interview, Prachanda has already said that he would implement the agreement signed with China. Along with trade and transit, there are other issues such as railway, roads and some airport projects that China wants to implement with the new government in Nepal.

As both neighbouring countries are making rapid economic progress, Nepal needs to benefit from it through a balanced approach. In 2009, Prachanda resigned from his first period as prime minister accusing India of playing a game to topple his government.

After stepping down, Prachanda became closer with China, while now, with his second time in office, relations between India and him have improved significantly. However, it seems that there will not be any better relations, until Dahal addresses the demands of Mahdes-based parties.

With maintaining diplomatic balance, Dahal's first priority is holding the local body election within his next 9 months, which is a key challenge. The now second largest party CPN-UML is fiercely criticizing the government saying that it is backed by India.

Without support of UML, it is very difficult to hold local body elections. However, without addressing the demands of Madhes-based parties, it seems impossible to create an environment conducive to proper elections.

Similarly, restructuring the local bodies is another issue. Formulation of laws required for holding the election is another potential obstacle to holding the elections on time.

Another challenge for Prachanda is to provide the relief packages to people affected by the earthquake. Though it has been one and half years since the devastating earthquake hit the country, people are yet to get government- pledged money to build their houses. The erstwhile government led by Oli also faced criticism for being very slow in responding to the catastrophe regarding reconstruction and rehabilitation.

There has been agreement that Prachanda will have to handover the leadership of government to Nepali Congress President Sher Bahadur Deuba. The Deuba-led government will be responsible for holding the provincial and national elections within the next nine months.

In conclusion, it is obvious that there is influence of India and China in domestic affairs in Nepal. Nepal will have to keep an excellent relation with both countries to take maximum benefit from them. At the same time, parties need to focus their attention on holding the elections to save the country from a constitutional crisis.

Review of Thailand's Migration Worker Management Policy under the ASEAN Community

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The fact that Thailand has been issued a "Yellow Card" by the European Union (EU) Commission for not taking sufficient measures in the international fight against illegal fishing (Illegal, Unreported and Unregulated fishing, IUU) threatens Thailand's fishery industry, the world's third-largest seafood exporter. The "Yellow Card" is a warning that Thailand needs to clean up its poorly regulated seafood industry that has been found to exploit migrant workers.[39] Since April 2015, the government has put in place several measures to tackle illegal (IUU) fishing such as labor laws preventing persons under the age of 18 from working on boats and in seafood processing factories, and established a common centre with a remit to track every fishing vessel in Thailand's fleet of about 42,000 vessels through a new registration and monitoring system. However, the roots of existing problems lie in the fragmentary character of Thailand's labor migration policy. Moreover, Thailand is a member of the ASEAN Community whose ambitious goal in its economic pillar is to create a free-flow skilled labor market. Thailand's labor migration policy, hence, takes into account not only its demand but also its obligations towards the ASEAN Community. This article will address the current situation of migrant workers in Thailand and review Thailand's labor migration policy to investigate whether it aligns with the ASEAN Community goals, and eventually provide suggestions for the labor migration predicament.

39 Guardian. Slavery and trafficking continue in Thai fishing industry. https://www.theguardian.com/global-development/2016/feb/25/slavery-trafficking-thai-fishing-industry-environmental-justice-foundation

I. Current situation of migrant workers in Thailand

The term "migrant worker", according to Article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national or do not have a usual residence. In general, the term "migrant worker" does not define a worker's skill level. Migrant workers, therefore, include low-skilled migrant workers as well as high-skilled "expats". However, in this article, only the issue of low-skilled migrant workers will be discussed.

The statistics from the office of foreign worker administration shows that in May, 2016, there were 1,389,002 documented migrant workers from ASEAN countries in Thailand. The number is composed of 1,366,544 low-skilled migrant workers who mostly came from Myanmar, Lao PDR and Cambodia, and 22,458 semi-skilled migrants mostly from the Philippines, Malaysia and Singapore[40]. However, the actual number of migrant workers in Thailand is unlikely to be quantified, given the fact that there are considerable numbers of irregular migrant workers being exploited in the seafood industry and other industries.

Among the pulling factors for the influx of migrant workers to Thailand are the different levels of development between Thailand and labor exporting countries as well as the gap of gross national income (GNI) per capita[41]. The dual economy of Thailand requires both semi- to high-skilled manpower in capital intensive industries, and low-skilled workforce in labor intensive industries. Despite the fact that 60% of the workforce in Thailand are low-skilled workers, Thailand faces a low-skill labor shortfall as fundamental education equips more and more graduates to become high-skilled workers.

40 Office of Foreign Worker Administration, Ministry of Labor. Statistics of Documented Migrant Workers from ASEAN in May 2016 [Online], retrieved from http://wp.doe.go.th/wp/images/statistic/aec/59/aec_may59.pdf.

Moreover, the migrant worker management policy has never reflected the actual demand of the country. Before 1992, foreigners were allowed to practice only 27 occupations pursuant to the Foreign Employment Act B.E. 2521. However, Article 17 of that Act stipulated the exception that the cabinet could approve a quota of migrant workers, also in other occupations, for a limited period due to labor-supply shortages. Article 17 is regarded as a fundament for the alleviation of strict laws banning migrant workers' employment. Nonetheless, the cabinet resolution in itself is not a statute. It can therefore be easily modified according to the policy direction.

Between 1992 and 2012, the policy for allowing migrant workers to work in Thailand was erratically enacted as well as not strictly enforced. For instance, the attempt to legalize irregular migrant workers was conceived to regulate the problems of irregular migrant workers in the seafood industry, construction, agriculture and among housemaids. The legalization process was conducted through nationality verification (NV) at the provincial level. However, the consequences of the NV process were not completely successful due to the costs and inefficiency of the process between the countries of origin and Thailand. As a result, many workers have not reported themselves and remain undocumented (irregular). The result of the incoherent migrant worker management policy has led to distrust and skepticism between Thai citizens and migrant workers who mostly come from ASEAN countries. Furthermore, it offered opportunities for human trafficking rings to extend their vicious business.

41 Aldaba, T. Fernando. 2015. The Impact of Economic Integration on Labor Migration in ASEAN [Online], retrieved from http://www.businessmirror.com.ph/the-impact-of-economic-integration-on-labor-migration-in-asean/.

II. Labor migration policy

Despite the fragmentary nature of labor migration policy in Thailand, the management of labor migration can be categorized into 4 measures as follows:

A. Determination of reserved occupations

Thailand has enacted the annex to the Foreign Employment Act B.E. 2522 to reserve 39 occupations exclusively for Thai nationals including manual work; work in agriculture, animal husbandry, forestry or fishery; bricklaying, carpentry or other construction work; wood carving; shop attendance; auditing; haircutting; shoe and hat making; architectural work; garment making; guide or conducting sightseeing tours; office of secretarial work; and legal or lawsuit services. These reserved occupations are an instrument to limit the possibility of migrant worker employment. The list of reserved occupations was created in B.E. 2522 and has been updated from time to time. However, it is not compatible with social development and globalization. Accordingly, the determination of reserved occupations does not satisfactorily serve the national interest. In addition, this ineffective labor migration law cannot control the number of irregular migrant workers entering Thailand.

B. Registration of irregular migrant workers for temporary stay

The registration of irregular migrant workers started in 1992 with very limited coverage, by allowing employers in 7 provinces along the Burmese border

to get irregular migrant workers registered. Only 706 migrants were reported and registered. These registered migrant workers were allowed to stay in Thailand for 1 year. In 1993, the registration was extended to include migrant workers in Thai marine fishing boats in 22 coastal provinces with the same condition that the Thai employers needed to bring their migrant workers for registration. In 1996, there was another round of migrant workers' registration in which the government issued a lenient measure related to the employment of illegal migrant workers from Myanmar, Lao PDR and Cambodia for temporary work. Their stay was legalized and extended up to 2 years. In addition, the types of works permitted to be performed were increased to cover mining, manufacturing, agriculture, construction and housemaids. As a consequence, 372,000 migrants were registered of which 263,782, or 87 percent, were from Myanmar.

In 1998, the government issued a quota of 158,253 migrant workers to be registered. As a result of the economic crisis, the government also repatriated certain migrant workers to alleviate the unemployment. Moreover, the government wanted to manage the irregular migrant workers systematically. In 2001, the national committee on irregular migrant worker management was established to regulate the irregular migrant workers for longer terms. It was the first time that irregular migrant workers in 76 provinces were allowed to be registered. The registration fee was 4,450 Baht which was equivalent to one month's salary. As a consequence, 586,000 migrant workers were documented. Still, one year later, only 350,000 migrant workers re-registered. The number of registered migrant workers constantly dropped every year. This was due to problems and difficulties in the process such as unofficial changes of employers, lay-offs of employees, high labor turnovers in agriculture and marine fisheries, and perceived high registration costs.

C. Legalization of irregular migrant workers

The registration of irregular migrant workers described above was not conceived to legitimize their stay as they have entered Thailand illegally. The purpose of registration is to document the number of irregular migrant workers in Thailand as well as to regulate them.

Pursuant to the Bangkok Declaration on Irregular Migration in 1999, the government of Thailand has concluded a bilateral agreement known as the Memorandum of Understanding (MOU) with Cambodia, Lao PDR, and Myanmar to bring legal labor into Thailand and to legalize the irregular migrant workers. After the MOU was signed with Lao PDR in 2002 and with Myanmar and Cambodia in 2003, the aim to legalize irregular migrant workers was manifested through the nationality verification procedures. The cabinet resolutions between 2004 and 2012 demanded irregular migrant workers to register and undergo the nationality verification process in order to identify their nationalities. They had to go through medical check-ups for the purposes of public health. The failure to pass the medical test led to deportation, while passing the test led to the grant of a work permit as well as medical social welfare comparable to that of the local population.

With regard to the nationality verification process, certain problems arose for irregular migrant workers from Myanmar. These issues were related to the country's precarious political situation characterized by a struggle between various minority communities and the Myanmar authorities. Migrant workers from minority communities were unlikely to register as there was a rumor that, through the nationality verification process, the minorities might be identified as non-Myanmar nationals because, according to the rumors, the government wanted to eradicate them. Hence, the outcome of the MOU was not completely successful due to the delayed process between the sending and receiving countries. As a result, many irregular migrant workers, especially those from Myanmar, did and do not report themselves. They remain irregular.

D. Legal import of labor from labor exporting countries

In addition to the legalization of irregular migrant workers, the MOU stipulates the import of labor from the MOU parties via licensed manpower agencies which were agreed by the importing and exporting countries. The licensed manpower agencies are responsible for taking care of migrant workers' rights and the sending process.

The process of legally importing labor starts with the request of a Thai employer at the Ministry of Labor. The Thai employer needs to indicate the quantity of migrant workers needed. The department of employment will then issue a labor quota certificate. After that, the Thai employer can submit the labor quota certificate along with other related documents according to the MOU to the licensed manpower agency in the exporting country. The licensed manpower agency issues the permit after consultation with the Ministry of Labor in its country. The Thai employer will then receive the list of migrant workers along with the permit so that he/she can report to the department of employment. At the same time, the migrant workers can apply for a visa at the Thai embassy, furnishing the documents from the Thai employer. The legally received migrant workers are able to stay in Thailand for 2 years. This period can be extended up to another 2 years (maximum of 4 years in total). They are entitled to labor rights and social welfare equivalent to that available for the local population.

III. ASEAN Community obligations related to Migrant workers

The management of migrant workers concerns both economic and social perspectives. Regarding the ASEAN Community which consists of three pillars: (1) ASEAN Economic Community (AEC) (2) ASEAN Political-Security Community (APSC) (3) ASEAN Socio-Cultural Community (ASCC), the management of migrant workers pertains to all the three pillars.

In the economic perspective, only the management of high-skilled labor is mentioned in the AEC blueprint. One of the AEC cooperation areas is human resources development and capacity building, allowing eight profession categories to circulate across ASEAN countries according to the Mutual Recognition Arrangements (MRAs). These MRAs establish common standards for skilled professionals, namely; nurse, doctor, dentist, accountant, engineer, architect, surveyor, and tourism manpower. The professionals who meet the standards set by the MRAs can apply for a recognition of their standard at the competent authority in their country of origin. After that, they can apply for jobs in ASEAN countries, while the domestic regulation is still applying to them. However, the context of low-skilled mobility across ASEAN countries is not discussed in the AEC blueprint.

Under the auspice of the APSC, the context of migrant workers emerges in human rights perspectives. As the APSC is determined to fight against trafficking in persons, many declarations have been signed by ASEAN member countries including the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW). The ACMW calls all ASEAN member states to prevent abuses, discrimination and exploitation of migrant workers. Furthermore, it is suggested that the ASEAN member states ratify and effectively fulfil the core Inter-

national Labor Standards laid down in the 1998 ILO Declaration on the fundamental principles and rights at work including the right to join and form unions. Nonetheless, the ACMW does not take into account the particular characteristics of migrant workers in ASEAN which are mostly undocumented. Thus, undocumented migrant workers are the most vulnerable but less protected.

IV. Policy suggestion

Although Thailand's labor migration policy attempts to manage the labor demands of Thai industries and the influx of migrant workers from ASEAN countries, the policy is not successful as it lacks effective enforcement and integrated policy planning. Furthermore, the sincerity of labor importing countries to tackle labor migration-related problems needs to be demonstrated through the protection of migrant workers, tailored to their particular characteristics.

In this regard, the following recommendations to enhance the effectiveness of labor migration management shall be made:

1. Labor supply and labor demand for each industry should be investigated by government, private and academic research institutes. Statistics should be collected to provide the number of labor migrants in any particular industry. This data will be used to set a suitable tax levy. Moreover, the data collected is a tool for setting labor migration policies.

2. As Thailand attempts to overcome the middle-income trap, the low-skilled migrant workers shall be equipped with better skills. Hence, work training is recommended as it can ease the barrier in the working environment between migrant and local workers. The work training can be done in cooperation projects between the government and private sectors.

3. Migrant workers shall receive equal pay for equal work. Even if workers have no skill and low productivity, employers shall not discriminate against them. Migrant and local workers shall be guaranteed equal rights at work.

4. As labor protection and welfare systems are necessary elements to achieve an equal treatment between migrant and local workers, the right for legal migrant workers to receive social security protection should be defined clearly.

The June 23rd Brexit vote in the UK

Dr. Cormac Mac Amhlaigh, Senior Lecturer, MacCormick Fellows & Academic Visitor Convenor; Director of Exams at the University of Edinburgh, Edinburgh Law School

On June 23rd 2016, the British electorate voted to leave the European Union. It is hard to underestimate the significance of this vote. The UK has been an EU member state for the last 43 years and its membership constituted a central feature of British political, foreign and economic policy over that period and arguably even before. This vote potentially marks a dramatic change in this virtually all aspects of British political life with knock-on effects for the EU and its remaining member states.

Beyond Europe there are a variety of interpretations of this decision, perhaps the most obvious one being that Britain wishes to 'pivot' away from Europe in its future foreign, economic, security and defence policy as well and/or become more isolationist. This is an obvious conclusion to draw but it is not clear that it is the best interpretation for a number of reasons:

- While the referendum question was reasonably clear cut the campaign leading up to the vote was everything but. Knowledge and information about the EU and what it does is generally low in EU Member States and the UK is no exception. The result of such a low knowledge base was that the information in the campaign was untrustworthy, decontextual, or at times outright dishonest. Fiction was frequently portrayed as fact and the resulting information coming from both leave and remain camps was confusing, contradictory and incoherent. Therefore it is unclear what precisely the 'leave' majority voted for given that the information in the campaign was so disorientating.

- The vote itself was close. The turnout was high at 72% but 'leave' beat 'remain' by 3% giving a picture that the British people are deeply divided on their opinion of Europe and their EU membership. Add the fact that Scotland and Northern Ireland, as distinct entities in the UK state voted to remain against the majority and the picture becomes even more complicated still.

- The sense of uncertainty is supported by the fact that there was no sense of what 'leaving' the EU exactly meant. Immediately after the vote, the leaders of the 'leave' campaign disappeared from public view with no programme of how to proceed. This resulted in a protracted leadership contests between the two main parties (one still ongoing) such that the question of what precisely the majority voted for on June 23rd is still no closer to being answered. Notwithstanding the current British Prime Minister's mantra that 'Brexit' (the term used to described UK withdrawal from the EU) 'means Brexit' there is very little detail of how this will happen and what the UK's future relationship with the EU will look like.

- Perhaps the only certainty from the vote is that it took place to serve party political interests – the governing Tory party where afraid of losing votes to an anti-EU party and was attempting to appease anti-EU elements in its own party -, that few actually believed that the electorate would vote to leave, and that nobody really knows how to proceed now that the result is to leave. It is hardly an example of deliberative democratic decision-making on questions of the utmost constitutional importance.

From a non-European, particularly Asian perspective, the vote will probably result in a greater British presence in the region in trade matters given that the UK will now negotiate its own trade deals rather than as part of the EU bloc. This will result in an additional partner in international trade politics for Asian countries. However what this will mean for Asian or global trade politics is far from clear.

The vote had immediate implications in causing the Prime Minister to resign and caused considerable political turmoil ever since. This is likely to continue well into the foreseeable future.

INTERVIEW

Interview with H.E. Kristi Westphalen, former Finnish Ambassador to

Finnish Ambassador Kristi Westphalen came to Thailand at a period of great uncertainty. It was before her arrival and under her predecessor that the offices of the Finnish Embassy had to be evacuated as the 2010 protests on Bangkok's streets reached a tipping point outside Central World in the Ratchaprasong area. The embassy's offices have since moved south to Ploen Chit and whilst things have been calmer than in 2010, Thailand has remained on unsteady grounds. Ambassador Westphalen looks back at her three years as Finland's chief representative in Thailand after having finished her term. Her credo? Expect the unexpected!

Q: How long have you been in Thailand and what was your position prior to this post?

My term as Finnish Ambassador to Thailand, Myanmar, Cambodia and Laos (until last year) is coming to a close in about two weeks' time. By then, I will have been here for three years. Prior to that, I was Consul General of Finland in Los Angeles for five years. Time to go home!

Q: When you first heard that you will be going to Southeast Asia, what were your thoughts and what did you expect? Did you know the region in general and Thailand in particular well?

I was not familiar with Southeast Asia and my knowledge of Asia was limited to some time I spent as a very young diplomat in China some thirty years ago. That China of course does no longer exist. So when I first got here, I started reading and I am still doing that to this day. I focused on books about social dynamics, society and history. Both my husband and I have had a truly wonderful learning experience.

Q: How do your expectations from back then and your experiences over last three years compare?

Two of my predecessors gave me some advice when I first came here. It was 'expect the unexpected' and that is truly what has happened. I came in September 2013, large scale demonstrations across Bangkok started in November 2013. The country has been in political turmoil in one way or another ever since then.

Q: Have you noticed a change in the working environment between what you had experienced prior to May 2014 and after?

Yes, there has been a tremendous difference in the sense that after the military coup the European Union decided that we will restrict our relations and interactions with the Thai government until a democratically elected government is back in place. It feels as if one of your hands is tied behind your back and we do hope

that we can quickly return to a time where normal relations can be resumed.

Q: Do you feel that European Union has maybe overreacted? Some observers seem to think the European response was somewhat harsher than for instance the U.S. American response to the coup. The suspension of a EU – Thailand Free Trade Agreement for instance must make your life as a European diplomat more difficult?

No, I do not think that is the case. If we look at an op-ed article for instance that came out about a month ago by the EU, US and Canada, we do see that we share the same concerns. It is not up to me to judge US policies on the matter and many Western governments that are represented here do share the same concerns as the EU. The EU had to make some very difficult choices and the outcome is one negotiated internally among all 28 members of the European Union. We have followed the same line ever since the military took power. It is important the we do not cut relations and that a continuous dialog remains in place where both sides can voice their point of view.

Q: During your time here, what were your main diplomatic goals and areas of focus?

Being in such a dynamic region, at the heart of ASEAN, furthering economic ties is one basic job for any ambassador here. It turned out that this was a major focus of our work whereas the political side of things has been somewhat slower. Whilst we did not need to prepare ministerial meetings as they simply did not take place, we have only two diplomats covering four countries. Being a fairly small embassy, typical embassy services take up a lot of resources and time. The area that has been most fruitful and productive has been promoting Finnish education in particular and our efforts in the education sector in general. We now have a number of projects, for example with the BMA (Bangkok Metropolitan Administration) and major universities where I have been able to recruit extra personnel to work on these growing projects. That has been very rewarding and we have been able to touch on important issues such as equality, participation, transparency, critical thinking wearing an 'education hat' which maybe would have not been possible wearing a 'democracy hat'. In future, freedom of expression and things like press freedom will also become a key issues.

Q: What other organisations and partners did you work particularly close with?

Scandinavian countries, four of which are present here, have traditionally strong ties to one another. Our societies are built in a similar manner so we think alike, which makes it very easy to work together. My colleagues from these embassies have been simply wonderful. A few months ago, we had a joint event with the Danish Embassy on 'Happiness'. We looked at the structures of Nordic societies and how they assure that people look into the future with more confidence. We have had a lot of interest and a successful event with many Thai participants.

Q: 'Happiness' is a special word in Thai politics these days, I suppose you were referring to Happiness Indices and the like rather than the NCPO?

Yes of course, and the event did actually get flagged by the Thai government because of that but it was a very different take on happiness and we had a good, memorable event. There was no end to questions by the participants who showed a genuine interest and it was good to see many young people asking questions which is not always the case, particularly among university students.

Q: Events being flagged, participants filmed…do you fear for the public space in Thailand?

Yes, and I do not think that these perimeters are going to change in the near future. Freedom of expression and press freedom are things that will come up during the upcoming drafting of the organic laws too. I am afraid that public space may become more restricted which is a very unfortunate development.

Q: How do you view the diplomatic community here in Bangkok in general? Are you sad to leave?

Yes, it is a very vibrant community and my husband and I have made some wonderful friends, some of which are leaving at the time as we do actually. It is sad to leave friends but that is the nature of the diplomatic business. But let me tell you, you leave and life goes on. I saw on my friend's Facebook recently – she had left to go back home to Canada – and she posted 'Two days into retirement – everything ok still'. So you see, life goes and you get to keep the friends you made along the way.

Q: What other things about Thailand will you miss?

Come the dark and cold Northern European winter, we will look back with great fondness on Thailand and all the beautiful places we have visited. I do not do particularly well with the heat frankly, but come November, December in Finland I am sure I will change my mind.

Q: What was your favourite pastime when you were not working?

My husband and I love walking along the beach somewhere in Hua Hin.

Q: What other places in Thailand have you visited?

We have seen many great places during our time here across all the four countries I was responsible for, having events all across the region. There are so many places we have not gotten to however. I have been here a fairly long time now but there are so many more places we want to spend time at – we will return as tourists. What has given me the most pleasure is visiting universities across the country, speaking there and meeting professors and students. We spoke freely, exchanged ideas and so on. This has been the most rewarding part for me which I truly enjoyed.

Q: If you have some time off, maybe half a day, what do you do?

I enjoy the swimming pool and the Finnish sauna in my house. It is wonderful!

Q: There is a sauna in your house? Was that an addition you brought to the house or has it always been there?

Let me tell you, every single Finn in Finland and all ambassadors abroad have a sauna. It is a Finnish civil right to have one! My house is close to On Nut, it is a beautiful place with a nice garden, pool and sauna.

Q: If you had a completely free hand in choosing where to go next, where would you go?

I am very happy to go back to Finland. I have been abroad for 8 years now and I want to rediscover my own country. Things change and I am very happy I will be able to spend some time in my home country and with my family. After a few years of that, I will be ready to go somewhere else again.

Q: What words of advice will you give you successor?

The same I was given when I first started – expect the unexpected. My immediate predecessor was evacuated along with all the embassy staff from our Central World offices in 2010 and everyone had to work from the residence for about 6 weeks. So I was well acquainted with the possible turmoil, although I did not expect things to go so quickly when I arrived in September 2013. You cannot predict what is going to happen but be as well prepared as possible and know your country.

Thank you very much, Excellency, for this interview.

The interview was conducted by Jan Kliem, Program Officer at CPG.

Picture: www.Bangkokpost.com

Interview with H.E. Ahmad Rusdi, Indonesian Ambassador to Thailand

On 13 June 2016 H.E. Ahmad Rusdi took up the post of the Indonesian Ambassador to the Kingdom of Thailand. The interview below Ambassador Rusdi informs about his personal background and shares his views on of some current issues and developments in international and Indonesian politics.

Q: First of all, thank you very much, Ambassador Rusdi, for your time. You have been here in Bangkok for three months now. What are your first impressions?

Generally, I can say that I am very happy to be here in Thailand. This is my last tenure as a diplomat after serving in the Foreign Service for 34 years, 20 years of it I served as a Protocol Officer. Now that I have been posted in Bangkok, I am happy that can learn more from Thailand. Thailand and Indonesia have close relations. The relationship is progressing since the establishment of formal diplomatic relations in 1950. Indonesia has a lot to learn from Thailand, especially how the government is guided by the King is very interesting for me. That includes the attention by the government to social und public topics. It is very interesting to monitor how the government manages agriculture, industry, tourism and even the international business sector. The Thai-people, including Thai-business people – the entire Thai-community profits from these efforts. Particularly interesting for us is to see how "halal food" is regulated and managed here in Thailand. Another first impression is the well developed infrastructure in Bangkok. Especially the connection to the airport is good. You can reach the airport also via train. In the city you have the possibility to take the subway. In Indonesia, we are in the process to expand our public transportation. Mainly that concerns the way to the airports. It is very important for the public as well as for business people.

Q: Please let us know a little bit about your personal background.

I come from Pekalongan, a city of Batik in Central Java where my family has a batik business in the third generation. In 1986 I left Jakarta and came to Prague with my wife and my daughter. There, our family became bigger. When we left Prague we came back to Indonesia in a group of five. In the meantime, in former Czechoslovakia, my two children were born. I have five brothers and two sisters. I am the second one among the siblings and the oldest brother. As the oldest brother I have to act as a model for the younger ones. We learn from each other. They rejoice with me about my success in the Foreign Service.

When I think about my parents and about how they taught us children to be successful, what stands out is that they were not thinking about the money, but thinking about holding a good friendship or making a client satisfied. Not to forget that my parents had to lead the business every day and they had to take responsibility for almost 300 employees as well as meeting the economic targets. I learned from my parents how to serve

but I wanted my work to be more efficient and not only for the business. It is my younger brother who continues the family's tradition of Batik now.

After I graduated from the University in Bandung in "International Relations" at the Faculty of Social and Politics, I joined the foreign service. My first posting was in Europe, my second in Asia, my third in the United Kingdom and in Greece. I have been working for the Foreign Service for almost 34 years now. As an ambassador you must be prepared 24 hours a day and seven days a week. My success is based on the studies I did, but far more significantly on the knowledge and experiences my parents provided me with. I am thankful for that. Until now I profit from these experiences they gave me. Next year I will retire as a Civil Servant. For the moment and close to my retirement, I am happy to stay among friends. It is a good time for me to be in Bangkok at a big embassy. Indonesia and Thailand have a long history of good bilateral relations. Now I have the possibility to make a contribution to the existing friendship between Indonesia and Thailand.

Q: What are personal goals for your term here in Thailand?

I want to further the existing bilateral relations between Indonesia and Thailand. That concerns every level: the government and other stakeholders including people to people contact. I hope to bring Indonesia and the Thai people closer. I also wish to intensify our relation not only in topics of politics and economy, but also when it comes to culture. Just to give an example: When I arrived here, I informed the Minister of Education, that Indonesia organizes the national Jamboree. More than 20000 Indonesian scouts will join this event. So I think about how the Thailand Boy Scouts, our friends, can participate in this event. So I invited them to join the event. Thailand sent 60 scouts to participate in the Jamboree. We want to intensify our relations to our neighbours. Through the brotherhood among the scouts and with our neighbours, we want to promote the exchange and leadership programs. It is a contribution to the next generation.

There are a lot of possibilities to cooperate between Jakarta and Bangkok, but not only between these two cities. There are also possibilities to cooperate with other provinces, especially regarding halal food and packaging.

Q: After these personal questions, I would like to ask for your views on some issues and developments in international politics and domestic affairs in Indonesia. Let us begin with the ASEAN. Together with Thailand, Indonesia has been playing a leading role in the development of the organization. How do you see the further role of Indonesia? What kind of role can Indonesia play in this organization?

Thailand and Indonesia, the founding fathers of ASEAN, Indonesia has been taking and always will continue to take a strong role in the organization. You surely know that the ASEAN will celebrate the 50th anniversary next year. For almost 5 decades Indonesia has been loyal and committed to the ASEAN in all sectors: in the cultural, social, economic and political sector. We continue to play the leading role. We feel committed, because ASEAN is growing and gets a bigger role as a dialogue partner to other parties: ASEAN and the

US, ASEAN and Russia, ASEAN and Europe, ASEAN+3, ASEAN and Australia. And now we officially established the ASEAN economic community.

Q: In this regard, what do you think about the application of Timor-Leste to join the ASEAN?

Indonesia welcomes Timor Leste's application for ASEAN membership. Since 2011 ASEAN has a working group to review the application. It is for the whole ASEAN to discuss and think about it. But this case is in progress and our understanding of this topic must fit the roadmap.

Q: The Asian region is becoming a very important strategic area for the USA and China. How do you see this issue, the competition for influence in this region between the US and China?

As we know, the world's geopolitical and economic interest is shifting towards Southeast Asia. A great power game is returning to the region. China has developed into a powerful nation and the US still is one. Political strategy must be observed carefully and that includes the South China Sea.

Q: On the South China Sea – Where do you see ASEAN factor in at the current crisis? ASEAN has been rather quiet on the recent PCA ruling.

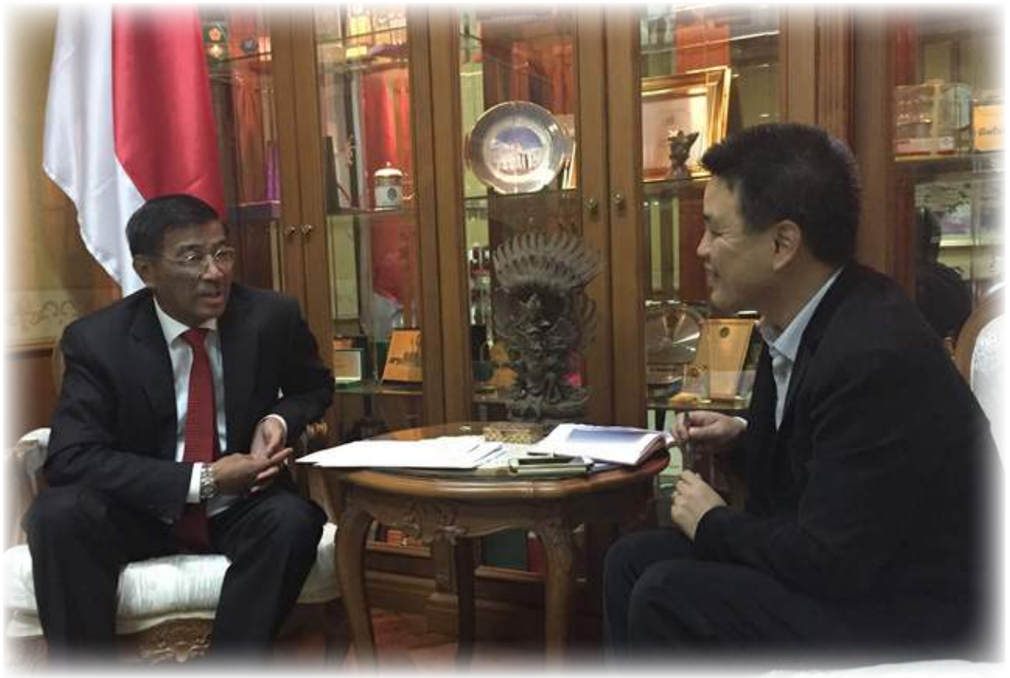
We have to think about what kind of role ASEAN should take in this conflict. We need to figure that out through dialogue and cooperation, for example within the context of ASEAN+3. In the near future, ASEAN needs to push forward an early conclusion of the Code of Conduct in the South China Sea.
I think a solution can only be found via dialogue and not by showing one's own power. There are many possibilities to find solutions and the means must not be limited to bilateral dialogues regarding the possibilities of the ASEAN.

Q: The final question concerns the religious, better the religious-political development in Indonesia. How do you assess the threat of the Islamic State in Indonesia? I remember the bombing in February, this was an IS-attack.

One of the characteristics of terrorism is that it can happen wherever and whenever in the world. The self-appointed Islamic State is perhaps the most non-Islamic terrorist group with an exclusive ideology. In Indonesia, we the government as well as the public, including the Islamic groups, have revealed our rejection of ISIS. The ideology contradicts our values of a united, tolerant and pluralist community. In Indonesia, the religious groups live in respect and tolerance together. So we have strictly banned ISIS in Indonesia, we even prohibited Indonesians to join ISIS activities. Our government and our people are committed to it. For the long-term as well, the military alone will not suffice to deal with the ISIS threat. We will use political force against radicalism. The government is very serious about solving this problem. ISIS concerns everyone, we talk about a global problem.

Thank you very much, Excellency, for this interview.

The interview was conducted by Dr. Duc Quang Ly, Project Manager at CPG.



Interview with the Deputy Director of Bureau of Foreign Affairs and Transnational Crime at the Department of Special Investigation (DSI) Khemachart Prakyhongmanee on DSI investigations

Q: Khun Khemachart, how long have you been with the DSI and what did you do prior to working for the Department?

Before starting my work at the DSI I worked as a detective in an investigation unit of the Royal Thai Police (RTP) for around 8 years. I then transferred to the DSI where I now work for about 12 years. 9 years ago, I started working in the foreign affairs and transnational crime section. Before that I was part of a surveillance unit.

Q: Why did you decide to leave the RTP and become part of the DSI?

I looked at the work I was doing at the RTP and at the same time studied the DSI act to establish the department. I was fond of it as it allows for its senior members to keep investigating actively even as they get older. At the RTP duties can change a bit away from investigative to more administrative work. Here at the DSI, I can actively investigate much longer, maybe until I retire.

Q: What is the focus of your bureau's work in particular? I assume, you deal mainly with foreigners?

Yes, due to the nature of my responsibilities at the Bureau of Foreign Affairs, I mainly deal with foreigners. The nationality does not however stop us from investigating a suspect or a person of interest. They are Thai or foreign. Generally speaking, our bureau has three main priorities. Number one is child pornography and the abuse and trafficking of children, then economic crimes such as credit card fraud and a third area which relates to international scams where unsuspecting people are lured into transferring large amounts of money to internationally acting, criminal organisations which can be based here in Thailand but operate in 3 or 4 other countries too. The crimes are transnational.

A further focus lies on facilitating cooperation with other countries from joint investigations to extradition of suspected and convicted criminals. Co-operations occur when either a foreign agency or government requests our help with an investigation or the other way around.

Q: In 2015, Thailand has introduced a new child pornography law. How has this impacted your work? Do you feel you have all the political support you need to carry out your investigations?

The law you are referring to came into effect in December 2015, only a few months after it was agreed upon.

In Thai history, this is one the fastest laws ever to become implemented, alluding to its importance. It is important for it covers the aspect of child pornography which in many cases leads to other offences. Child pornography can be the starting point, leading to child abuse or human trafficking. Sometimes pornography comes into play after abuse and trafficking have already happened. This is very interesting for us and the law gives us another way into these kinds of investigations.

Much more important however is the cooperation that is necessary for our investigations and this is also part of the legislative act to establish the DSI in the first place. We work with a number of partners, cooperation groups from the RTP for example. In law enforcement you cannot do these things on your own. Especially as our main field of investigation regarding child pornography is the internet, we work together with computer and forensic experts from the RTP online and on the ground.

Q: What does a typical investigation look like? Are you observing specific fora in the internet or do investigations include active, undercover operations?

Both. We make use of all powers that we are granted under the corresponding sections of the DSI act and these include undercover operations and active participation in internet forums. The internet is hugely important in the field of child pornography today as it is where most of the criminals act so we need to have direct access and know what exactly is happening. The internet is where we pull a lot of our evidence from and therefore it is exceptionally important to our chain of custody and what we present to a public prosecutor when an investigation has finished.

Q: How do investigations typically start? On initiative by the DSI or based on concerns and suspicions brought forward by the civil society or other agencies?

There are many different ways. One channel would be via request by a law enforcement agency of another country. Another channel would be concerns brought to our attention by the local community. This happens a lot here in Thailand. The DSI does not exclusively work with law enforcement agencies but also with local communities, NGOs and social workers. We have an extensive network here. For example, we investigated the case of a man in a rural Thai village who kept inviting students to his house for grooming sessions. They began taking baths together and he would take pictures of the students. This behaviour was then reported to the local authorities and we started to investigate. We began analysing his behaviour, finding out his routine and observe. In general, once we find out what nationality the suspect has, we contact the liaison officer or embassy in question and see if we can find any further background information. Furthermore, together with NGOs, social workers and psychologists, we speak to victims and their families and assess the possibilities of them identifying the offender. Another example here of why we cannot work alone!

Q: When does the case become transnational and therefore a case you would be working on?

Not only the possession of child pornographic materials is illegal but also, and in particular, sharing this material. The man in question was sharing his pictures with a large group of people from other countries in Europe and Asia using the 'dark web'. These people do not always share pictures however. We have recently closed a case where the offender shared stories about what he had done to the children within the same group. He wrote down what he did and then went on to share these stories over the internet. He later confessed to his crimes. In future, we also want to look into the financial aspect of this. We would like to investigate more with regards to financial transactions that happen when this kind of material is being shared.

Q: How big is your caseload and how many cases have you successfully closed?

Since the implementation of the new law in December 2015 we have successfully closed 13 cases all over Thailand resulting in arrests. Over 10 cases are still ongoing and a number of cases were investigated but sufficient evidence could not be gathered. The cases itself vary largely in their details, but they are all big cases in one respect or another. In one case we arrested a Japanese national who abused at least seven children, another case involved at least 25 victims including the offender's own daughter. In terms of prosecution, the case gets bigger when we find evidence not only for possession of illegal material but also evidence that the suspect has been sharing it.

Q: The DSI has recently raided the home of a British national in the north of the country. This case got some attention in the international press. Was this a good example of the DSI's work?

Yes, absolutely. In this specific case, US American authorities had informed us about the upload of child pornographic images from a specific IP address. After an investigation on the ground, we could close this case successfully and the offender has confessed to all charges. Again, we did not work alone though. The DSI is based in Bangkok and investigating a case in some rural village can sometimes take months. In this case, we investigated for about 6 months. So we need the RTP and local police to help with the surveillance etc. Furthermore, in order to collect and analyse evidence properly and in accordance with protocol, we do not raid houses by ourselves. We take forensic teams, for instance from the Ministry of Justice or the RTP, and computer experts with us that help search the suspects' house. They take evidence from everywhere, not just the computer – the house is for instance searched for traces of sperm or saliva to look for possible signs of child abuse or trafficking. Like I said earlier, sometimes child pornography is only the beginning and this case is an example for that. Based on evidence and victim interviews, the offender in this case will also face charges under the human trafficking law. The crime scene and the victims can be of great importance for prosecution later on.

Another thing we do have is a media operations team. At the end of an operation someone will sit down with the media team to explain what the investigation was about and what we have found. Sometimes we work together with embassies when we encounter a language barrier. I recently lead the raid of a house of a Swiss national in Pattaya where we found over 10.000 illegal pictures of children. The suspect in question would only speak German though so we cooperated with the respective embassy. He has by now confessed that he had been abusing children in that house for over 4 years and we are expecting him to be convicted

in the near future. This case was very large in terms of the numbers of photographs we found – like a child pornography industry.

Q: Once this man is convicted, will he serve his full prison sentence in Thailand?

He will serve a prison sentence in Thailand and then he will be deported. It is our job to keep the house clean. In the same vein, sometimes we get information on suspects and we find evidence that these people are engaged in criminal activities we work together with Thai Immigration to deport these people. Sometimes we investigate, have some evidence but not enough for prosecution. We send our report Thai immigration and many times, these people can be deported and we clean the house this way. In these cases, we also follow-up by reporting the person in question to the respective embassy so that a possible investigation can continue in their home country.

Q: What factors are important when it comes to working together with other countries? Are there countries you work with more than others, particularly in the region? What about Cambodia and the Philippines in particular?

The most important factor is the state of the law in the respective country. When we cooperate with a country that has child pornography laws in place, similar to those in Thailand, working together is very easy. In other cases, when there are no such laws in place, cooperation can be more difficult. Sometimes people in the other country are not aware of what is happening and what consequences the actions of a criminal in question could have. Regarding these countries, we do a lot of explaining.

Q: Why do you think some countries do not have laws in this regard?

Politics, each country is different and domestic politics can help or hinder the implementation of these kind of laws. In Thailand as well, it took a long time. I cannot tell you the reasons, but we only just implemented the child pornography law ourselves.

With regards to the countries you were referring to, Cambodia and the Philippines, our future focus here rests on child sex tourism. We have to work closely together in particular with those two countries to make progress on this issue. Many paedophiles that are arrested here in Thailand frequently cross the border to Cambodia, cooperation there is key. Many offenders also flee to Cambodia to evince prosecution in Thailand. Cooperation with the government and NGOs in Cambodia is good, but we want to forge it more and more in the future.

Q: How does the cooperation with local NGOs work exactly and what is the focus regarding the victims especially when an investigation is finished?

In my opinion, the problem with some NGOs is that they do not know their role. At times, they investigate

themselves. So we had to channel the cooperation to make it better. We now have a child advocacy centre in Chiang Mai where NGOs and law enforcement agencies come together and cooperate. This has been very successful and this centre will now expand and open its doors also in Pattaya and Phuket. Here, we bring together law enforcement, NGOs and social workers to investigate and support the victims during and after a case. It is very important to stress that our work does not end with prosecution of offenders. Our job is to protect these children and also keep them from falling back into the same environment after a case is closed. The investigation is only the beginning.

Thank you very much, Deputy Director Khemachart, for this interview.

The interview was conducted by Jan Kliem, Program Officer at CPG.

Interview with Prof. Narong Jaiharn, former Dean of the Faculty of Law, Thammasat University

From June 2013-July 2016 Prof. Narong Jaiharn was Dean of the Faculty of Law of Thammasat University, the host of CPG. In the interview below he informs about studying law at Thammasat Faculty of Law in general and his term as Dean of the Faculty in particular.

Q: Dean Narong, the Faculty of Law of Thammasat is known as the most prestigious law school in Thailand. What does the Faculty stand for which makes it so attractive to young people interested in legal studies?

There are several reasons which explain the attractiveness of Thammasat Faculty of Law. Firstly, our curriculum contains a wide range of elective subjects which offer students the possibility for specialization in those legal areas in which they are interested in working as a legal professional. According to our regulations 12 elective subjects are required to receive a certificate such as the certificate in the Criminal Law which qualifies for a legal profession as the police and the public prosecutor, for example. Another certificate which also enjoys high numbers of student enrollment is the certificate in Public Law, including Constitutional and Administrative Law. Students who have received this certificate work for example at the Parliament or for advisors of government and state agencies or administrative judges. The third certificate is the Business Law certificate, which qualifies them to work for business law firms. Besides these certificates, some of the elective courses provide the opportunity to engage in legal practice which makes it attractive to study law at Thammasat University. We offer two subjects on Moot Court and legal practice for which 50% of our students apply. Especially the Moot Court competition is a very interesting engagement and experience for our students. We motivated and supported them to take part in Thai and international competitions. In the last years our students joined three big international competitions: The first one is the Philipp C. Jessup International Law Moot Court Competition for which our students won the national contest in last two years to go to the final round in USA. The second one is the Asia Cup Moot. The third and latest one our students joined is the Red Cross International Humanitarian Law Moot. These competitions are a good opportunity for our students to use their English skills and to find a team to go to these competitions. Attractive for our students is another aspect in our curriculum. In terms of law and society, we supported our students to learn more about "law in action". Here our students are engaged in the question of what makes a lawyer a good lawyer in terms of professional ethics. Within the Faculty Assistant Professor Dr. Prinya and Associate Professor Dr. Pokpong are working on teaching strategies to sensitize the students for the real legal problems in society, for example equity and access to justice in the rural areas, and to discuss possible solutions.

Q: What advice would you offer to students to become and remain good members of the legal community?

Law students should be interested in law and society, meaning social justice. In our students' orientation events we had told them that if you study at law faculty you should not stay in the classroom only, but come in touch with the people or engage in the legal clinic to provide assistance to the poor. And, indeed, our students had joined the faculty's activities in the frame of our "Law in Action"-project or in the course "Legal profession" of Ajarn Prinya. Besides that, in our international LL.B. Program in Business Law Assistant Professor Dr. Munin Pongsapan, the Director of the program, encouraged our students to engage in pro bono work. This is a cooperation of our faculty with the faculties of Khon Kaen and Chiang Mai University and National University of Singapore. Finally, I want to note that some of our students offer the courts the service as interpreter volunteer.

Q: What were the challenges during your time as Dean?

Currently our faculty is facing the challenge of the globalization of legal studies and legal education. For example, within the ASEAN one of the challenges is how Thai law students can cope with the demands of the increasing internationalization of legal studies, now and in ten years, for example in the field of communication. That means that we have to teach the students not only in Thai language. In our courses we still focus on Thai law, so we teach in Thai, not in English. But not only ASEAN, the EU, China, Japan or Korea are also part of the international trend and this is a challenge, too. That means if someone tries to do a business in Thailand we need qualified lawyers to explain the Thai legal system in English, or in French or Japanese or Chinese. That's the first challenge. The second challenge is the improvement of the ranking of our faculty. We aim to become one of the top hundred law schools in Asia, we have to do more research. And we have to write and publish articles which are qualified to be published in the top international law journals. In this regard our new dean is now putting great efforts and providing funding to support our faculty members to publish in English, and we hope that members of CPG and other foreign lecturers of our faculty will support us in this regard.

Q: But on the other side I think you have also achieved a lot during your term as dean. Can you name some examples?

I think my achievement which includes our executive staffs is that we laid a focus on the internationalization of our faculty. We tried to establish cooperation with top universities around the world. For example, in Southeast Asia we work together with Singapore National University and the Indonesian Jambi University, Jember University, Surabaya University and University of Indonesia which is one of the best in Indonesia. In Malaysia it is the University of Malaya. Now we have begun to work on a co-operation with the University of Hanoi. We are planning to do a student and academic exchange visit this year. In East Asia, we have collaborated with several universities in Japan, among them are Kobe University, Keio University, Kyoto University and Chuo University which operates an overseas hub office at our faculty. In South Korea and

China we work together with Yonsei University, Sogang University and Dankook University. In China we have closed relation with SWUPL Chongqing University respectively. In the United Kingdom the universities of Edinburgh, Glasgow, East Anglia, Reading, SOAS, Nottingham and Dundee have cooperation agreements with us. Wisconsin University is another partner in the US where we are also in contact with the University of Indiana for cooperation. We have also visited New York University and even Yale University for discussions on cooperation. As for Australia, we arranged an international conference on constitutional law with the University of New England last year and have a student exchange and double PHD degree program with Macquarie University. And of course CPG; I have learned from CPG's experience to cooperate with international partners so that we could have our own experience of international cooperation. And we hope to futher our cooperation in each area, we want to get partners in every continent.

Q: This is an impressive number of cooperations. What kind of cooperation are covered?

We have basically tried to cooperate in 3 areas: First: Student exchange in three levels, bachelor, master and doctoral degree. Second: Lecturer exchange, some of our lecturers went to our partner law schools and we invited senior professors from our partner University to give lectures here. Third: International conferences or bilateral conferences of two universities. And let me add a last one: An international information exchange. This is our international concept. We want to continue in these areas to make our faculty of law an international one. And I thank CPG. We are very proud that CPG and the German government have been supporting us so much in this area and has extended this support. I think that it would be very good for our faculty if you can establish the Master program of the ASEAN School of Governance.

Q: As you are now not any more burdened with the manifold time-consuming duties of a Dean and having more time to focus on your own academic work, what is currently your research field?

In my term as the dean I did not have enough time, indeed. But it is possible now, and my research focus on three areas. The first one is criminal law and criminal justice. I have recently submitted to the Ministry of Justice a proposal for a new law pertaining to the establishment of an assistance system for the victims of crime, and the Ministry of Justice accepted this proposal. The second area of my research is environmental law. I have done research for a draft law on the regulation of water management for the water department. And the third area is human rights in criminal process. I have done the initial country report for the implementation of the Convention Against Torture (CAT), and in the next two years, Thailand have to submit the second report, so may be the faculty of law is about to prepare this report.

Q: And how would you spend your spare time now? Can you revive any hobbies which you were not able to enjoy to a wished extent under the tight work schedule of a Dean?

My hobby is to play football, but I don't play very much nowadays, because I have no energy. So I'll watch more movies and listen to music, mostly classical music, Thai classical music especially. And I like to travel.

Q: So, now you have more time to spend with your family, I guess?

Yes, indeed, I spend more time with my family now. I have three sons. The oldest son has nearly finished his Master degree in criminal law, the second son has finished his Bachelor degree in Interdisciplinary Studies in Social Sciences at the Lampang Campus of Thammasat University, and the youngest son is in high school. He possibly will study accounting after high school.

Thank you very much, Ajarn Narong, for this interview!

The interview was conducted by Dr. Duc Quang Ly, Project Manager at CPG.

LIFESTYLE AROUND THAMMASAT UNIVERSITY: Lebua State Tower Bar

Lebua at State Tower Hotel will the venue of CPG's 7th Annual International Conference from 12-14 October 2016. (see poster announcement above). This is a good opportunity to introduce our readers to ***Lebua's*** famous ***Sky Bar***.

The ***Sky Bar at Lebua State Tower***, also called the "Hangover Bar", is regarded as one of the most stunning bars in Bangkok. Located on the 64th floor of the state tower, 820 feet in the air, ***Sky Bar*** is one of the highest rooftop bars in the world. Its prices, with cocktails starting from 500 THB, do make it one of the more expensive bars in Bangkok, but it is definitely worth a visit. The breath-taking 180-degree city and river views, great atmosphere and good cocktails are making it a real highlight in Bangkok's nightlife.

Guests come from all over the world, which gives the bar a nice, international vibe. The bar is divided into two areas. The smaller area has a more relaxed feel to it. Here you can sip your drinks sitting on couches and comfortable chairs while enjoying the great view of the Chao Phraya River.

In the bigger, and usually more crowded part, you will find the round bar, illuminated in different colours as well as the famous and award-winning ***Sirocco*** restaurant. The world's tallest open-air restaurant has received worldwide recognition for its special Mediterranean food, fancy ambience and good service. In accordance with this, prices are quite high and reservations are recommended a week in advance. However, it is not obligatory to eat at ***Sirocco*** to enjoy the

views- you are more than welcome to just get a drink from the bar and enjoy the atmosphere.

The name ‘Hangover Bar’ of course, is a nod to the American movie ‘Hangover II’ which was filmed here in Bangkok. If you are a film buff, you will recognise the setting at ***Sky Bar***, where some of the movies memorable scenes were shot.

The best way to get to ***Sky Bar*** from Thammasat University is either by cab or express boat. Both options will take you around 25 minutes. You can catch the express boat at the “Maharaj Pier” which is located close to Thammasat. After a 15-minute ride, you will need to alight at “Oriental Pier”. From here, it will take you about ten minutes to walk over to ***Sky Bar***.
The dress code is smart casual. Therefore, athletic or sports uniforms as well as shorts or flip flops should be avoided.

Picture: www.lebua.com

ANNOUNCEMENTS

People

Picture: Twitter @GlynnTDavies

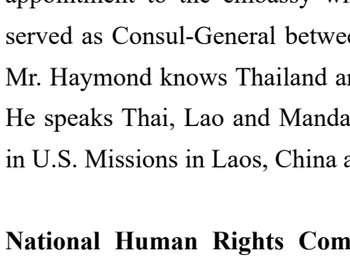
The U.S. Embassy in Bangkok welcomes **Mr. Peter Haymond** as the new Deptuy Chief of Mission. Mr. Haymond has had a long relationship with Thailand and this is his second appointment to the embassy where he previously served as Consul-General between 1994 and 1996. Mr. Haymond knows Thailand and the region well. He speaks Thai, Lao and Mandarin and has served in U.S. Missions in Laos, China and South-Korea.

National Human Rights Commission of Thailand: Selection of experts of the Advisory Board

The National Human Rights Commission of Thailand has recently selected the experts of its Advisory Board. Among them are two representatives of the Faculty of Law of Thammasat University: ***Assoc. Prof. Dr. Pokpong Srisanit*** and CPG Director ***Henning Glaser***.

Past Events

CPG trip to Kho Kood



In August 2016 CPG with all its staff members, legal clerks and interns made a weekend retreat to beautiful *Kho Kood*. Kho Kood is an island in Trat Province in the Gulf of Thailand and the eastern-most island before Cambodia. It is famous for its beautiful nature, beaches and the best about it: it is not as crowded and touristic as some other islands in the south of Thailand.

The trip started on Friday at 5 am in the early morning. Meeting point was Thammasat University where a minivan stood by to drive us. The ride to the pier, where we had to take the boat to Kho Kood, took about 5 hours. After a good lunch and a one-hour boat ride, which really affected the stomach of a few of us due to the tough swell, the team arrived at Kho Kood.

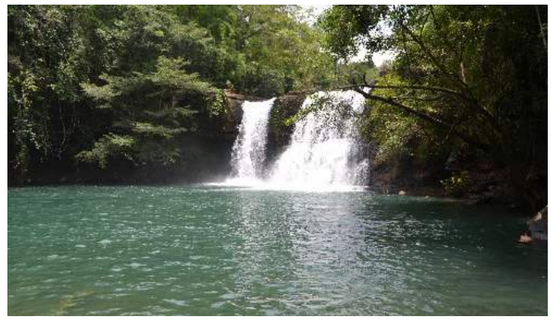
Accommodation was provided in two lovely bungalows in a resort called "Away Kho Kood" located very close to the beach. After recovering and taking a shower, we began to enjoy the beautiful sea and had lots of fun with the big waves.

A special thing about the bay was that it is located where a river flows into the sea. As a result, at a certain point the salty water from the sea feels like fresh water.

In the evening we had Thai food for dinner together and played a few games of billiards. A few of us then continued the evening, having a few drinks in the local bar.

The next day we decided to visit the Hat Khlong Chao Waterfall. Jumping from trees, cliffs and taking pictures under the waterfall made it a great experience. After lunch some of us decided to get a good Thai-massage whilst the others went kayaking or took another bath in the sea.

On Sunday, we had to leave the resort quite early to catch the boat. On our way back to Bangkok we still had one stop in a very good seafood restaurant right on the beach where we tasted the delicious regional specialty "soft shell crabs". A stop at a food market where we bought exotic fruits completed a highly memorable trip.



.On 28 June 2016 CPG Program Officer ***Jan Kliem*** was invited to give a presentation on Thailand's current political turmoil at Bielefeld University in front of a group of students. The event was organised by the local student group of the Konrad Adenauer Foundation at Bielefeld University. The students showed great interest in the situation in Thailand and were grateful for the opportunity to discuss a country that gets little attention in the German press.

From 2 July to 7 August 2016, the Office of Academic Resources, Chulalongkorn University, held the event *"Capturing the Intangible"* at Silpa Wittayanitas Hall, Office of Academic Resources, Chulalongkorn University and Siam Square One, Bangkok.

On 3 July 2016, Friedrich Ebert Foundation arranged a public discussion on *"What kind of education for Thai society?*" at Central World, Bangkok.

On 7 July 2016, the Center for Peace and Conflict Studies, was joining hands with the Network Development Institute, Chulalongkorn University and held the seminar *"The Environment: Past, Present, Future for a Sustainable and Resilient Future"* at Wisit-PrajubMob Building, Social Research Institute Jacques Amyot Room, 4 floor, Chulalongkorn University, Bangkok, Thailand.

On 8 July 2016, the College of Interdisciplinary Studies, Thammasat University, held the seminar *"Terrorism in the 21st century: threats without borders"* at Thammasat University, Tha Prachan campus, Bangkok, Thailand.

On 12 July 2016, the *Regional Programme Political Dialogue Asia and the Pacific* of the Konrad Adenauer Foundation held at policy panel *"Cities as Agents of Migrants Integration"* in Singapore.

On 15 July 2016, the Center for Peace and Conflict Studies, Chulalongkorn University, hosted the seminar *"Peace Process: Reality or illusion?"* at Facul-

ty of Political Science, Chulalongkorn University, Bangkok, Thailand.

On 21 July 2016, the DAAD Information Center arranged the monthly presentation *"Study and Research in Germany"* at the Auditorium of the Thai-German Cultural Foundation, Bangkok

On 25 July 2016, the Asia Centre organized the seminar *"Brexit & its implications: An Asia Centre Roundtable"* at Asia Centre, Bangkok, Thailand.

On 25 July 2016, the Konrad Adenauer Foundation arranged a discussion about "*Moving forward of EU after Brexit"* at Bangkok, Thailand. A discussion organized jointly with the Institute of Democratization Studies (IDS) about the current political and economic situation in Europe after the proposed referendum on United Kingdom membership of the European Union.

On 26 July 2016, the Konrad Adenauer Foundation organized a seminar about *"Understanding the Constitutional Draft of Thailand and the National Referendum"* at Phetchaburi, Thailand. In support of the National Reform in Thailand KAS-SNA offered an opportunity for local citizens, to encourage the knowledge and understanding of the draft constitution and the upcoming referendum.

From 26 to 30 July 2016, the Institute for Cultural Diplomacy (ICD) hosted the *"International Symposium on Cultural Diplomacy in the Arab: The Political, Economic and Culture Dimension"* at the ICD House of Arts and Culture at Berlin.

From 27 to 30 July 2016, Institute of Human Rights and Peace Studies, Mahidol University, held ***"****Conflict reformation projects, course 5th: Social and political conflicts"* at Mahidol University, Salaya campus, Nakornpathom, Thailand.

On 28 July 2016, the Konrad Adenauer Foundation hosted a workshop about *"Civic Education for Election Campaign and Qualitative Voter"* at Uttaradit. The KAS partner IPPS invited teachers and officials of the school supervisory to share their experiences on political education. In addition a strategy was discussed how to introduce education for democracy in schools.

On 28 July 2016, the Konrad Adenauer Foundation arranged a public lecture about *"China and Cambodia: An asymmetric relationship"* at Phnom Penh.

On 28 July 2016, The Faculty of Political Science Chulalongkorn University, invited to a special talk by ***Dr. Robert H. Taylor*** and following discussion about *"The Army, strong leadership and democratization: Myanmar and Thailand"* at Bangkok, Thailand.

On 1 August 2016, on the occasion of Switzerland's 725th National Day the Swiss Embassy held an official reception at the Swissôtel Nai Lert Park, Bangkok, Thailand. More than 500 representatives from government, business and civil society were warmly welcomed. Famous Swiss delicacies such as "Raclette", "Fondue", chocolate and wine were served. Furthermore, Swiss regional music of young "Alphorn" talent Anna Rudolf von Rohr was played.

On 2 August 2016, the Konrad Adenauer Foundation/Thailand in cooperation with the Office of the Constitutional Court arranged a seminar about *"Environmental Problems and Abuse of Constitutional Rights"* in Bangkok. Constitutional officers and legal experts shared ideas and realize the Court's significant role in protecting constitutional rights in environmental aspects.

On 2 August 2016, Chulalongkorn University Faculty of Political Science held the seminar *"The Constitutional Draft 2016"* at Chula Hall, Chulalongkorn University, Bangkok.

From 2 to 6 August 2016, the ASEAN Studies Center, Chulalongkorn University, hosted the workshop *"ASEAN Community 2025: Stability, Prosperity and Sustainability"* at Chulalongkorn University, Bangkok,

From 2 to 6 August 2016, the ASEAN Studies Center, Chulalongkorn University, was joining hands with the Parliament to hold the *"2nd Parliamentary ASEAN Community Forum and Chula ASEAN Week 2016: We Bond as One"* at Chaloem Rajakumari 60 Building (Chamchuri 10 Building), Chulalongkorn University and Siam Square One, Bangkok.

On 3 August 2016, CPG Director ***Henning Glaser*** was invited to speak at the Foreign Correspondents Club Thailand as one of three speakers in a panel on *"Thailand's proposed 20th constitution just days before the nationwide constitutional referendum"* on 7 August 2016. The audience at the Correspondents Club, comprising predominantly of international journalists, saw vivid, yet balanced presentations by the three speakers. ***Henning Glaser*** gave a decidedly objective account on how this constitution would shape the political landscape in Thailand if it is indeed accepted by the people in a few days' time. He also pointed to some important differences between the 'transitory' part of the draft and the rest of the charter. All speakers elaborated on the continuous role the military will play in Thai politics in the foreseeable future if this constitution comes into effect. The entire event can be watched here: https://www.youtube.com/watch?v=-BDiRQxbzEQ

From 3 to 6 August 2016, the Institute of Human Rights and Peace Studies, Mahidol University, held the international conference *"Conflict reformation projects, course 6th : Human Rights: Principles and Practice"* at Mahidol University, Salaya campus, Nakornpathom, Thailand.

On 4 August 2016, Political Development Council, hosted the workshop *"The standard of the moral of the project to create a network of cooperation to set the moral standards of those who hold political and government officials"* at Centra Government Complex Hotel & Convention Centre Chaeng Watthana, Bangkok, Thailand.

On 4 August 2016, the Konrad Adenauer Foundation/Thailand in cooperation with the Office of the

Administrative Courts of Thailand hosted the workshop *"Strengthening and Disseminating Knowledge about the Administrative Justice and Protection of People's Rights"* at Mukdahan Provinz.

On 14 to 16 August 2016, the 7th batch of Konrad Adenauer School for Young Politicians (KASYP) met for their second training programme in Penang, Malaysia to discuss *"Local Governance and Development"* with political and community stakeholders.

From 17 to 19 August 2016, the German and Polish Embassy in Bangkok in cooperation with the Centre for European Studies, Chulalongkorn University, and the Faculty of Music, Silpakorn University, celebrated the *"Polish-German Jubilee Days"* on the occasion of the 25th Anniversary of the Signing of the Treaty of Good Neighbourship and Friendly Cooperation between the Republic of Poland and the Federal Republic of Germany. The these days programm included lectures, discussions panels, as well as a concert, an exhibition and a movie session. CPG Director ***Henning Glaser*** was among the invited speakers and presented on "Refounding the Consitutional State in the Light of the German-Polish Relations". ***CPG Project Manager Duc Quang L***y was panelist of a movie session discussing the film "Winter's Daughter".

On 18 August 2016, the Konrad Adenauer Foundation Thailand in cooperation with the Institute of Democratization Studies provided a discussion platform about *"The Challenging for Economic Policy Formulation for Thailand"* in global political and economic contexts in Bangkok.

On 18 August 2016, the Faculty of Political Science, Chulalongkorn University held seminar *"Pittaya and Thai political and administrative science"* on the occasion of the 68th anniversary of the Foundation of the Faculty of Political Science of Chulalongkorn University at the Faculty of Political Science, Chulalongkorn University, Bangkok.

On 19 August 2016, College of Local Administration, Khon Kaen University, held the conference *"The Third National Conference on Public Affairs Management - Governance Transition and Reform to Sustainable Development"* at College of Local Administration, Khon Kaen University, Khon Kaen, Thailand.

On 19 August 2016, the German International Cooperation (GIZ) and the Thai Ministry of Energy jointly organized the "Thai-German Community-based Renewable Energy Conference 2016". Participants developed ideas, project leads and strategies to implement community-based renewable energy projects focusing on *"Bioenergy, PV-rooftop- and renewable energy hybrid-grid systems"* at Bangkok.

From 21 to 26 August 2016, the Ministry of Human Rights and Law of the Republic of Indonesia hosted the international conference *"Comparative Perspectives on Legislation Making and Constitutional Rights"* in Jakarta and Surabya, Indonesia. The conference goes back to an initiative of the Ministry's Director-General for Legislation ***Prof. Widodo Ekatjahjana,*** a long term partner and friend of CPG. It gathered experts and speakers from 13 countries from Asia, Australia and Europe to engage in exchange and discussion on national systems of securing the impact of basic rights in the process of legislation making. CPG Director ***Henning Glaser*** was among the invited speakers and presented on the German perspective stressing the strong role of the German Constitutional Court in protection human rights in the legislation making process.

The conference was complemented by a roundtable discussion on ASEAN cooperation in the field an combating transnational crime, a visit to the Indonesian Constitutional Court and to the city of Surabaya whose Mayor ***Tri Rismaharini*** was selected third among the top ten mayors by Word Mayors in 2014.

In the context of the Constitutional Court visit CPG was provided the opportunity for an interview with Chief Justice Prof. ***Arief Hidaya***t which will be published in an article on the Indonesian Constitutional Court in the next COM issue.

On 23 August 2016, Konrad Adenauer Foundation Thailand in cooperation with the Office of the Administrative Courts of Thailand organized a seminar *"Strengthening and disseminating knowledge about the administrative justice and protection of people's rights"*. The seminar was a platform for legal experts, state officials, and administrative judges to exchange ideas on administrative jurisdiction process at Ploy Palace Hotel, Mukdahan, Thailand

From 25 to 26 August 2016, the second COSATT conference on *"Migration and Internally Displaced Persons in South Asia"* has been jointly organized by the Regional Centre for Strategic Studies (RCSS), Colombo in cooperation with the Centre for South Asian Studies (CSAS), Nepal and Konrad Adenauer Foundation's *Regional Programme Political Dialogue Asia and the Pacific* in Colombo, Sri Lanka.

From 25 to 26 August 2016, Konrad Adenauer Foundation Thailand arranged the internaional conference to present *"the Challenges of the way to successful cultural and religious cooperation between ASEAN members"* at Mahidol University, Nakhonpathom.

On 26 August 2016, Konrad Adenauer Foundation/ Thailand in cooperation with the Office of the Civil Service Commission and Forward Foundation organized a seminar about *"Climate Change: Effect on Livelihood of Nakhonsawan Province*" to examine current environmental policies in Thailand's central provinces and to discuss about possible issues significant for policy making.

From 26 to 29 August 2016, the Institute for Cultural Diplomacy arranged the international symposium *"Cultural Diplomacy in the Commonwealth 2016"* in London, United Kingdom.

On 30 August 2016, the German Thai Chamber of Commerce, in collaboration with the American, Australian, British, Belgium, Canadian, Irish and South African Chambers of Commerce, arranged a Chambers luncheon with guest speaker Dr. Thitinan Pongsudhirak about *"Thailand after Referendum: Trends and Directions"* at Siam Kempinski Hotel, Bangkok.

From 1 to 2 September 2016, Academic Fora arranged the "*Bangkok 34th International Conference on Business, Economics, Social Science & Humanities"* in theme of "Advances in collaborative research for Business, Economics, social science and humanities" at Holliday Inn Bangkok Silom Bangkok.

From 1 to 2 September 2016, World Research Center Top Ideas organized the *"3rd International Conference of Business, Economics, Management, Information Technology and Social Science"* at Centara Nova Hotel, Pattaya.

From 1 to 2 September 2016, the Canadian International Journal of Science and Technology organized *"ICASLE 2016 - International Conference on Social Science, Literature, Economics and Education"* at Millennium & Copthorne Hotels, Chelsea Football Club, London.

From 1 to 2 September 2016, VADEA with the University North and the Faculty of Law, University of Split held the *"16th International Scientific Conference on Economic and Social Development"* at the Faculty of Law, University of Split, Split, Croatia.

From 1 to 3 September 2016, Sakarya University and Sabahattin Zaim University in collaboration with Durham University (UK) organized *"The International Joint Conference on Islamic Economics and Finance"* at Titanic Business Bayrampasa Hotel, Istanbul, Turkey.

From 3 to 4 September 2016, World Research Center Top Ideas organized the *"4th International Conference of Business, Economics, Management, Information Technology and Social Science"* at KEE Hotel, Phuket.

From 5 to 6 September, the University Governance & Regulations Forum held the *"11th Annual University Governance and Regulations Forum"* in Sydney.

From 5 to 9 September 2016, Kasetsart University and Mendel University jointly arranged the *"XI International Conference on Applied Business Research ICABR 2016"* in theme of "Globalization and Regional Development" at Pattaya Hotel, Chonburi,.

From 6 to 8 September 2016, the Ontario International Development Agency organized the *"International Conference on Sustainable Development 2016"* at Pearl International Hotel, Kuala Lumpur.

From 7 to 8 September 2016, the International Association of Academicians and Researchers arranged the *"International Conference on Law, Humanities and Social Sciences"* at Hotel Citrus, Kuala Lumpur.

From 7 to 8 September 2016, Panoply Consultancy arranged the *"2nd International Conference on Advanced Research in Business and Social Sciences 2016"* at Patra Jasa Bali Resort & Villas, Bali, Indonesia.

From 8 to 9 September 2016, the International Institute for Academic Development held the *"International Academic Conference on Law, Politics & Management 2016"* at Budapest, Hungary.

From 11 to 12 September 2016, Ontario College for Research and Development hosted the international conference on *"Humanities, Literature, Business and Education"* at Furama Hotels & Resorts, Bangkok.

From 13 September 2016, Critical Legal Conference arranged the conference on *"Critical Perspectives on Culture and Preservation: ProClarity in our Past, Present, and Future Cultural Heritages"* at the University of Kent's Canterbury campus, South East of England.

From 14 to 15 September 2016, the International Association of Humanities, Social Sciences & Management Researchers held the *"International Conference on E-Governance, Law and Education"* at Holiday Inn Dubai, Dubai, United Arab Emirates.

On 15 September 2016, Advena World LLC organized the *"Leadership, Ethics, and Urban Issues 2016 International Conference"* at Double Tree by Hilton Hotel, Washington DC.

Upcoming Events

On 3 October 2016, the Partnership for Action on Green Economy (PAGE) will arrange a *"High-level Policy Dialogue"* with a focus on job creation and social inclusion at the International Training Centre of the ILO in Turin, Italy. The Dialogue will take place at PAGES's second global Academy on the Green Economy, from 3-15 October. For further information see http://www.un-page.org.

From 8 to 9 October 2016, the Association of Social Sciences and Humanities will hold the *"First International Conference on Research Advances in Social Sciences and Humanities"* in Phuket. For more information see http://anissh.com/.

From 11 to 12 October 2016, the International Organization for Migration (IOM) will host the workshop *"International Dialogue on Migration 2016: Follow-up and Review of Migration in the SDGs (II)"* at Geneva, Switzerland. For more information see https://www.iom.int

From 12 to 15 October 2016, United Cities and Local Governments (UCLG) will organize the *"5th UCLG Congress: World Summit of Local and Regional Leaders"*. The Congress under the theme "Local Voices for a Better World" will bring together over 3000 stakeholders at Bogota, Colombia. Details accessible at https://www.bogota2016.uclg.org/

From 13 to 14 October 2016, the Polish Association of International Studies, the Institute of Political Science at the University of Gdansk, the Gulf Studies Center at College of Arts and Sciences of Qatar University will organize "*The 2nd Edition of the international conference: Contemporary Arab and Muslim World in the International Relations"* at the University of Gdańsk, Poland. For further information see http://arabconference.eu/.

From 13 to 15 October, the International Academic Forum will hold the *"Asian Conference on Politics, Economics & Law 2016"* at the Art Centre Kobe, Kobe, Japan. For more information see http://iafor.org/.

From 17 to 20 October 2016, the *"44th session of the Intergovernmental Panel on Climate Change (IPCC)"* at the United Nations Conference Centre in Bangkok, Thailand. Read more at http://www.ipcc.ch/.

From 21 to 22 October 2016, the International Network for Sexual Ethics and Politics, in cooperation with Miami University Luxembourg will arrange the workshop on *"Regulating and Legitimating Sexualities: the State, Law, Sexual Culture and Change under Neo-Liberalism"* at Miami University Luxembourg, Luxembourg. For further information see http://www.insep.ugent.

From 21-23 October 2016, International Islamic University Malaysia will host the *"2nd World Congress on Integration and Islamicisation: Focus on Medical and Health Care Sciences"* at University Malaysia, Pahang, Malaysia. Details are available at http://www.iium.edu.

From 29 October 2016, National University of Malaysia and Prince of Songkla University will host the *"International Conference on Islamic Jurisprudence"* at Krabi Front Bay Resort, Krabi, Thailand. Details are available at http://ukmsyariah.org/.

From 8 to 10 November 2016, the Ministry of Foreign Affairs of the People's Republic of China will host the *"16th Informal Seminar on Human Rights"* in Beijing, China. For further information see http://www.asef.org/.

From 10 to 11 November 2016, the *"Universal Academic Cluster International November Conference"* will take place at Walailak University Coordination Unit, Bangkok, Thailand. For further information see http://www.universal-conferences.org/.

On 11 November 2016, the Global Academic Research Institute will hold *"2nd International Conference on Election and Democracy"* at the Azores University, Ponta Delgada, Portugal. Details available at http://electionanddemocracyconference.globalacademicresearchinstitute.com/.

From 14 to 15 November 2016, Khon Kaen University will hold *"The 12th International Conference on Humanities and Social Sciences "* at Khon Kaen University, Kon Kaen, Thailand. Details available at https://www.kku.ac.th/.

From 14 to 16 November 2016, the Office of the High Commissioner of Human Rights invites to participate the *"2016 UN Forum in business and Human Rights"* at the Palais des Nations, Geneva, Switzerland. The Forum will be held under the title "Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy". More information see http://www.ohchr.org/.

From 15 to 16 November 2016, the Asian Corporate Governance Association will arrange the **"***ACGA 2016 Annual Conference – the Asian Business Dialogue on Corporate Governance***"** at the Conrad Hotel, Tokyo, Japan. Details accessible at http://www.acga-asia.org/.

From 17 to 18 November 2016, the Law Association for Asia and the Pacific will organize the *"LAWASIA Technology & Law Conference 2016"* in Kuala Lumpur, Malaysia. Further details available at http://www.lawasia.asn.au/.

From 21 to 22 November 2016, Academic Fora will arrange the Bangkok 33rd International Conference on *"Business, Economics, Social Science & Humanities"* at Holiday Inn Bangkok Silom, Bangkok, Thailand. Further details available at http://academicfora.com/.

From 22 to 24 November 2016, Higher Education Forum (HEF) will organize the *"4th Asia-Pacific Social Science Conference (APSSC)"* at Kyoto Research Park, Kyoto, Japan. For further information see http://www.apssc.org/.

From 5 to 7 December 2016, Tomorrow People Organization will be held *"Peace and Conflict Resolution Conference 2016"* at AETAS Lumpini hotel, Bangkok, Thailand. For further information see http://www.pcrconference.org/faq.html.

From 16 to 17 December 2016, Business, Education and Law Research Group will organize the *"2016 International Conference on Practices in Law, Business and Education"* at Pattaya, Thailand. For further information see http://belrg.org/.

From 26 to 27 December 2016, Global Association for Humanities and Social Science Research (GAHSSR) will host *"9th International Conference on Social Science and Humanities"* at Asian Institute of Technology (AIT), Conference Center, Bangkok, Thailand. Further details available at http://gahssr.org/.

Scholarship Opportunities

The CERN in Switzerland has announced two available post-doc positions in Theoretical Physics in its **Postdoc Fellowship Programme**. Applicants must be scientists from Non-Member States, researchers from ASEAN eligible. The fellowship's duration is one year. Application is possible until 15 October 2016, for more information see https://jobs.web.cern.ch/job/11815.

The **Paris University International Doctoral Programme** is a stipend with a duration of three years at the Institut Pasteur. Applicants should hold a Master's degree in science, medicine or related disciplines from a non-French university. 120 laboratories are located at the Institut Pasteur, where the participant's research will take place. For the stipend it is necessary to be fluent in English. Application deadline is on 14 November 2016, more details available at http://ec.europa.eu/euraxess/index.cfm/links/singlenews/56869.

The **Scholarship for Graduates from developing and newly industrialized countries**, established by the German Academic Exchange Service (DAAD), is a scholarship for graduates no matter which discipline with a duration up to 36 months. Scholars from developing and newly industrialized countries with at least two years professional experience get the opportunity to take a postgraduate's or Master's degree at a German university. A possible doctoral degree scholarship is not precluded. For more information see https://www.daad.de/deutschland/stipendium.

The **Visiting Professors Programme** (VPP) gives an opportunity for researchers from ASEAN to research and work in the Netherlands. The programme was established by the Royal Netherlands Academy of Arts and Science and aims to support excellent

researchers of all disciplines. A budget for research as well as the travel and accommodation expenses of participants are included. Deadline for the application is on 1 November 2015. Further information available at https://www.knaw.nl/en/awards/funding/visiting-professors-programme-vpp.

The **EUI Max Weber Postdoctoral Fellowships in the Social Science and Humanities** is an opportunity for qualified researches from around the world. As the biggest international postdoctoral programme in social science and humanities in Europe, the fellowship offers 50-55 fellowships that are fully funded. Researchers can apply until 25 October 2016. Details are accessible at http://www.eui.eu/ProgrammesAndFellowships/MaxWeberProgramme/Index.aspx.

The **Wellcome Intermediate Fellowships** in Public Health and Tropical Medicine takes place in the United Kingdom is established to support mid-career researchers from countries with low- and middle-income to build independent research programmes in those countries. The research approach focuses on improving public health and tropical medicine on a local as well as on a national and global level. Duration of the funding is about 5 years. Researchers from ASEAN are welcome to apply, deadline is on 28 November 2016. For further information see https://wellcome.ac.uk/funding/intermediate-fellowships-public-health-and-tropical-medicine.

The International Institute for Applied Systems Analysis (IIASA) provides **Postdoctoral Fellowships** in Austria. The interdisciplinary research is policy-oriented with a priority placed on problems of a global nature: Energy and Climate Change, Food and Water Poverty and Equity. The fellowships lasts two years. Next call is on 5 October 2016, applicants from ASEAN eligible. Details available at http://www.iiasa.ac.at/web/home/education/postdoctoral-Program/Apply/Application-2014.en.html.

The **International PhD programme** funded by the intergovernmental European Molecular Biology Laboratory (EMBL) provides 240 fellowships in molecular life sciences for students from all over the world at any time. Registration deadline is on 17 October, application deadline on 24 October 2016. For more information see http://www.embl.de/training/eipp/application/index.html.

The **Junior Research Fellowship Program** is an opportunity in Thai-French cooperation for young Thai researchers to build a promising collaboration with their French counterparts. Fellows are invited to spend up to 6 months in France working in a laboratory. Applicants need to have a completed PhD before February 2017, application possible until 25 October 2016. Details are accessible at http://www.thailande.campusfrance.org/en/page/junior-research-fellowship-program.

The **Viadrina International Program - for Graduates**, funded by the German Academic Exchange Service (DAAD), offers to foreign PhD students scholarships for a research stay in 2017 at the Europe University Viadrina Frankfurt (Oder), Germany, for a duration up to 3 months. Application is due 6 November 2016. For further information: ipid-programm@europa-uni.de.

CPG Job-Market

As a service, CPG provides a regularly updated overview of currently open job offers in fields and from institutions related to CPG's focal areas of work.

Organization	Vacant position	Department, Office, Location	Closing Date	Information available at:
Suranaree University of Technology	Lecturer	Institute of Agricultural Technology, Suranaree University of Technology, Nakhon Ratchasima, Thailand	15 October 2016	http://web.sut.ac.th/
Khon Kaen University	Lecturer	Faculty of Achitecture, Khon Kaen University, Khon Kaen, Thailand	7 November 2016	http://reg7.kku.ac.th/E-Administration/
Prince of Songkla University	Lecturer	Interdisciplinary Graduate School Of Nutraceutical and Functional Food, Prince of Songkla University	30 November 2016	http://www.psu.ac.th/sites/files/n7439_doc.pdf
Chiang Mai university	Lecturer (Department of Agricultural Economy and Development, Department of Companion Animal and Wildlife Clinic Small Animal Clinic)	Chiang Mai University, Chiang Mai, Thailand	16 December 2016	http://www.cmu.ac.th/cmuannouncedetail.php
University of the Thai Chamber of Commerce	Lecturer in many position (School of Business, School of Humanities and Applied Arts, School of Communication Arts)	University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	Secretary of the President	Office of Administration, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	Programmer	Center for Teaching Excellence, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	Audit	Office Of Internal Audit, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	UTCC-AAA Project Officer	University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	Director of Human Resources	Office of Human Resource Management, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/

University of the Thai Chamber of Commerce	Computer Systems Officer	Office of Computer Services, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	Administrative Officer	Office of Physical Facilities, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	Head of Maintenance	Office of Physical Facilities, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	Field Staff	Research Institute for Policy Evaluation & Design, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/hr/
University of the Thai Chamber of Commerce	Coordinate Officer	The Center of Economics & Business Forecasting, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/

University of the Thai Chamber of Commerce	Researcher in many position (The Center of Economics & Business Forecasting, Family Business & SME Study Center)	University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
University of the Thai Chamber of Commerce	Scholar	Office of Strategic and Budget Planning, University of the Thai Chamber of Commerce, Bangkok, Thailand	Until filled	http://department.utcc.ac.th/
Mahidol University International College (MUIC)	Business Administration	MUIC Human Resource Section, Mahidol University, Nakhon Pathom, Thailand	Until filled	http://www.muic.mahidol.ac.th/eng/?page_id=9966
Office of Information and Communication Technology	Information Systems Officer	OICT, Bangkok, Thailand	2 October 2016	http://unjobs.org/vacan-
Economic and Social Commission for Asia and the Pacific	Intern - Administration	ESCAP Bangkok	31 October 2016	http://unjobs.org/vacan-
Economic and Social Commission for Asia and the Pacific	Intern – Conference Service	ESCAP, Bangkok, Thailand	6 December 2016	http://unjobs.org/vacan-

Chemonics International Inc.	Chief of Party	Urban Adaptation Financing Activity, Bangkok, Thailand	30 December 2016	http://unjobs.org/vacan-
Office of the High Commissioner for Human Rights	Intern in many position (Public Information, Human Rights)	OHCHR Thailand, Bangkok, Thailand	30 December 2016	http://unjobs.org/vacan-
Economic and Social Commission for Asia and the Pacific	Intern – Social Sciences	ESCAP, Bangkok, Thailand	31 December 2016	http://unjobs.org/vacan-
Office for the Coordination of Humanitarian Affairs	Intern - Programme Management	OCHA Regional Office for Asia and the Pacific (ROAP), Bangkok, Thailand	15 January 2017	http://unjobs.org/vacan-
Economic and Social Commission for Asia and the Pacific	Intern – Statistics	ESCAP, Bangkok, Thailand	30 January 2017	http://unjobs.org/vacan-
Economic and Social Commission for Asia and the Pacific	Intern in many position (Environment Affairs, Information Systems & Communication Technology, Economic Affairs	ESCAP, Bangkok, Thailand	31 January 2017	http://unjobs.org/vacan-

Economic and Social Commission for Asia and the Pacific	Intern in many positions (Public Information, Multimedia)	ESCAP, Bangkok, Thailand	15 February 2017	http://unjobs.org/vacan-
UNICEF - United Nations Children's Fund	Consultancy – Face to Face Marketing Executive	UNICEF East Asia and Pacific, Bangkok, Thailand	29 April 2017	http://unjobs.org/vacan-
UNICEF - United Nations Children's Fund	Consultancy - Face to Face Senior Team Manager	UNICEF East Asia and Pacific, Bangkok, Thailand	15 July 2017	http://unjobs.org/vacan-
UNICEF - United Nations Children's Fund	Consultancy – Sustainable Development Goals (SDGs) Targets and Indicator for Children in Thailand	UNICEF East Asia and Pacific, Bangkok	10 August 2017	http://unjobs.org/vacan-

FHI 360	Many positions (Monitoring and Evaluation Officer, Program Officer, Administrative Officer, Program Manager, Senior Technical Officer, Senior Program Officer, Technical Officer, Communications Manager, Finance Officer, Lead Innovation Advisor, Laboratory Technician, Quality Compliance Associate, Chief of Party/ Project Director)	FHI 360, Bangkok, Thailand	Until filled	http://unjobs.org/vacan-
QED Group	Many positions (Support Positions in Open Innovation, Technical Positions in Open Innovation)	Bangkok, Thailand	Until filled	http://unjobs.org/vacan-
ChildFund International	Program Internship	ChildFund International Bangkok, Thailand	Until filled	http://unjobs.org/vacan-

Impressum

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